105TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 105–164
1st Session } { Part 3

FINANCIAL SERVICES ACT OF 1997

NOVEMBER 3, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany H.R. 10]

The Committee on Commerce, to whom was referred the bill (H.R. 10) to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Services Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS, INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS

Subtitle A—Affiliations

SEC. 101. GLASS-STEAGALL ACT REFORMED.

(a) SECTION 20 REPEALED.—Section 20 (12 U.S.C. 377) of the Banking Act of 1933 (commonly referred to as the "Glass-Steagall Act") is repealed.

(b) SECTION 32 REPEALED.—Section 32 (12 U.S.C. 78) of the Banking Act of 1933 is repealed.

SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK HOLDING COMPANIES WHICH ARE NOT FINANCIAL HOLDING COMPANIES.

(a) IN GENERAL.—Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended to read as follows:

"(8) shares of any company the activities of which had been determined by the Board by regulation under this paragraph as of the day before the date of the enactment of the Financial Services Act of 1997, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation, unless modified by the Board);".

(b) CONFORMING CHANGES TO OTHER STATUTES.—

(1) AMENDMENT TO THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 105 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850) is amended by striking ", to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act,".

(2) AMENDMENT TO THE BANK SERVICE COMPANY ACT.—Section 4(f) of the Bank Service Company Act (12 U.S.C. 1864(f)) is amended by striking the period and adding at the end the following: "as of the day before the date of enactment of the Financial Services Act of 1997.".

SEC. 103. FINANCIAL HOLDING COMPANIES.

(a) IN GENERAL.—The Bank Holding Company Act of 1956 is amended by inserting after section 5 (12 U.S.C. 1844) the following new section:

"SEC. 6. FINANCIAL HOLDING COMPANIES.

"(a) FINANCIAL HOLDING COMPANY DEFINED.—For purposes of this section, the term 'financial holding company' means a bank holding company which meets the requirements of subsection (b).

"(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES.—

"(1) IN GENERAL.—No bank holding company may engage in any activity or directly or indirectly acquire or retain shares of any company under this section unless the bank holding company meets the following requirements:

"(A) All of the subsidiary depository institutions of the bank holding company are well capitalized.

"(B) All of the subsidiary depository institutions of the bank holding company are well managed.

"(C) All of the subsidiary depository institutions of the bank holding company have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution under the Community Reinvestment Act of 1977.

"(D) The company has filed with the Board a declaration that the company elects to be a financial holding company and certifying that the company meets the requirements of subparagraphs (A) through (C).

"(2) FOREIGN BANKS AND COMPANIES.—For purposes of paragraph (1), the Board shall establish and apply comparable capital standards to a foreign bank that operates a branch or agency or owns or controls a bank or commercial lending company in the United States, and any company that owns or controls such foreign bank, giving due regard to the principle of national treatment and equality of competitive opportunity.

"(3) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—

"(A) IN GENERAL.—If the requirements of subparagraph (B) are met, any depository institution acquired by a bank holding company during the 24-month period preceding the submission of a declaration under paragraph (1)(D) and any depository institution acquired after the submission of such declaration may be excluded for purposes of paragraph (1)(C) until the later of—

"(i) the end of the 24-month period beginning on the date the acquisition of the depository institution by such company is consummated; or

"(ii) the date of completion of the 1st examination of such depository institution under the Community Reinvestment Act of 1977 which is conducted after the date of the acquisition of the depository institution.

"(B) REQUIREMENTS.—The requirements of this subparagraph are met with respect to any bank holding company referred to in subparagraph (A) if—

"(i) the bank holding company has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and

"(ii) the plan has been approved by such agency.

"(c) ENGAGING IN ACTIVITIES FINANCIAL IN NATURE.—

"(1) IN GENERAL.—Notwithstanding section 4(a), a financial holding company and a Board supervised investment bank holding company may engage in any activity and acquire and retain the shares of any company the activities of which the Board has determined (by regulation or order) to be financial in nature or incidental to such financial activities.

"(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Board shall take into account—

"(A) the purposes of this Act and the Financial Services Act of 1997;

"(B) changes or reasonably expected changes in the marketplace in which bank holding companies compete;

"(C) changes or reasonably expected changes in the technology for delivering financial services; and

"(D) whether such activity is necessary or appropriate to allow a bank holding company and the affiliates of a bank holding company to—

"(i) compete effectively with any company seeking to provide financial services in the United States;

"(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

"(iii) offer customers any available or emerging technological means for using financial services.

"(3) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:

"(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

"(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.

"(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

"(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

"(E) Underwriting, dealing in, or making a market in securities.

"(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1997, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

"(G) Engaging, in the United States, in any activity that—

"(i) a bank holding company may engage in outside the United States; and

"(ii) the Board has determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Act of 1997) to be usual in connection with the transaction of banking or other financial operations abroad.

"(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

"(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

"(ii) such shares, assets, or ownership interests are acquired and held by a securities affiliate or an affiliate thereof as part of a bona fide underwriting or merchant banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

"(iii) such shares, assets, or ownership interests, are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and

"(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).

"(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

"(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

"(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance);

"(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance com-

pany in accordance with relevant State law governing such investments; and

"(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not directly or indirectly participate in the day-to-day management or operation of the company or entity except insofar as necessary to achieve the objectives of clauses (ii) and (iii).

"(4) ACTIONS REQUIRED.—The Board shall, by regulation or order, define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

"(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

"(B) Providing any device or other instrumentality for transferring money or other financial assets;

"(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

"(5) POST CONSUMMATION NOTIFICATION.—

"(A) IN GENERAL.—A financial holding company and a Board supervised investment bank holding company that acquires any company, or commences any activity, pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired no later than 30 calendar days after commencing the activity or consummating the acquisition.

"(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in section 4(j) with regard to the acquisition of a savings association, a financial holding company and a Board supervised investment bank holding company may commence any activity, or acquire any company, pursuant to paragraph (3) or any regulation prescribed or order issued under paragraph (4), without prior approval of the Board.

"(d) PROVISIONS APPLICABLE TO FINANCIAL HOLDING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

"(1) IN GENERAL.—If the Board finds that a financial holding company is not in compliance with the requirements of subparagraph (A), (B), or (C) of subsection (b)(1), the Board shall give notice of such finding to the company.

"(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Within 45 days of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company shall execute an agreement acceptable to the Board to comply with the requirements applicable to a financial holding company.

"(3) BOARD MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

"(4) FAILURE TO CORRECT.—If, after receiving a notice under paragraph (1), a financial holding company does not—

"(A) execute and implement an agreement in accordance with paragraph (2);

"(B) comply with any limitations imposed under paragraph (3);

"(C) in the case of a notice of failure to comply with subsection (b)(1)(A), restore each depository institution subsidiary to well capitalized status before the end of the 180-day period beginning on the date such notice is received by the company (or such other period permitted by the Board); or

"(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (b)(1), restore compliance with any such subparagraph by the date the next examination of the depository institution subsidiary is completed or by the end of such other period as the Board determines to be appropriate,

the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, to divest control of any depository institution subsidiary or, at the election of the financial holding company, instead to cease to engage in any activity conducted by such company or its subsidiaries pursuant to this section.

"(5) CONSULTATION.—In taking any action under this subsection, the Board shall consult with all relevant Federal and State regulatory agencies.

"(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A financial holding company shall assure that—

"(1) the procedures of the holding company for identifying and managing financial and operational risks within the company, and the subsidiaries of such company, adequately protect the subsidiaries of such company which are insured depository institutions from such risks;

"(2) the holding company has reasonable policies and procedures to preserve the separate corporate identity and limited liability of such company and the subsidiaries of such company, for the protection of the company's subsidiary insured depository institutions; and

"(3) the holding company complies with this section.

"(f) NONFINANCIAL ACTIVITIES.—

"(1) IN GENERAL.—Notwithstanding section 4(a), a financial holding company may engage in activities which are not (or have not been determined to be) financial in nature or incidental to activities which are financial in nature, or acquire and retain ownership and control of the shares of a company engaged in such activities, if—

"(A) the aggregate annual gross revenues derived from all such activities and all such companies does not exceed the lesser of—

"(i) 5 percent of the consolidated annual gross revenues of the financial holding company; or

"(ii) $500,000,000;

"(B) the consolidated total assets of any company the shares of which are acquired by the financial holding company pursuant to this paragraph are less than $750,000,000 at the time the shares are acquired by the holding company; and

"(C) the holding company provides notice to the Board within 30 days of commencing the activity or acquiring the ownership or control.

"(2) INCLUSION OF GRANDFATHERED ACTIVITIES.—For purposes of determining the limits contained in paragraph (1)(A), the gross revenues derived from all activities conducted, and companies the shares of which are held, under subsection (g) shall be considered to be derived or held under this subsection.

"(3) FOREIGN BANKS.—In lieu of the limitation contained in paragraph (1)(A) in the case of a foreign bank or a company that owns or controls a foreign bank which engages in any activity or acquires or retains ownership or control of shares of any company pursuant to paragraph (1), the aggregate annual gross revenues derived from all such activities and all such companies in the United States shall not exceed the lesser of—

"(A) 5 percent of the consolidated annual gross revenues of the foreign bank or company in the United States derived from any branch, agency, commercial lending company, or depository institution controlled by the foreign bank or company and any subsidiary engaged in the United States in activities permissible under section 4 or 6; or

"(B) $500,000,000.

"(4) INDEXING REVENUE TEST.—After December 31, 1998, the Board shall annually adjust the dollar amount contained in paragraphs (1)(A) and (3) by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

"(5) NONAPPLICABILITY OF OTHER EXEMPTION.—Any foreign bank or company that owns or controls a foreign bank which engages in any activity or acquires or retains ownership or control of shares of any company pursuant to this subsection shall not be eligible for any exception described in section 2(h).

"(g) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

"(1) IN GENERAL.—Notwithstanding subsection (f)(1) and section 4(a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Financial Services Act of 1997 may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

"(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1997;

"(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

"(C) the company engaged in such activity continues to engage only in the same activities that such company conducted on September 30, 1997, and other activities permissible under this Act.

"(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if, as of the day before the company becomes a financial holding company, the annual gross revenues derived by the holding company and all subsidiaries of the holding company, on a consolidated basis, from engaging in activities that are financial in nature or are incidental to activities that are financial in nature under subsection (c) represent at least 85 percent of the consolidated annual gross revenues of the company.

"(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under subsection (c).

"(4) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—A depository institution controlled by a financial holding company shall not—

"(A) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection, subsection (f), or subparagraph (H) or (I) of subsection (c)(3); or

"(B) permit any of its products or services to be offered or marketed, directly or through any arrangement, by or through any company described in subparagraph (A).

"(5) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—An insured depository institution controlled by a financial holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to this subsection or subparagraph (H) or (I) of subsection (c)(3).

"(h) DEVELOPING ACTIVITIES.—A financial holding company and a Board supervised investment bank holding company may engage, or directly or indirectly or acquire shares of any company engaged, in any activity that the Board has not determined to be financial in nature or incidental to financial activities under subsection (c) if—

"(1) the holding company reasonably concludes that the activity is financial in nature or incidental to financial activities;

"(2) the gross revenues from all activities conducted under this subsection represent less than 5 percent of the consolidated gross revenues of the holding company;

"(3) the aggregate total assets of all companies the shares of which are held under this subsection do not exceed 5 percent of the holding company's consolidated total assets;

"(4) the total capital invested in activities conducted under this subsection represents less than 5 percent of the consolidated total capital of the holding company;

"(5) the Board has not previously determined that the activity is not financial in nature or incidental to financial activities under subsection (c); and

"(6) the holding company provides written notification to the Board describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.".

SEC. 104. CERTAIN STATE AFFILIATION LAWS PREEMPTED.

(a) IN GENERAL.—Section 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846) is amended by adding at the end the following new subsection:

"(c) PREEMPTION OF CERTAIN STATE RESTRICTIONS.—

"(1) AFFILIATIONS.—No State may by law, regulation, order, interpretation, or otherwise, prevent or restrict an insured depository institution or a wholesale financial institution from being affiliated with an entity (including an entity engaged in insurance activities) as authorized by this Act or section 17(i) of the Securities Exchange Act of 1934.

"(2) CERTAIN ACTIVITIES CONDUCTED IN CONJUNCTION WITH AFFILIATES.—No State may by law, regulation, order, interpretation, or otherwise, prevent a national bank or a wholesale financial institution from engaging, or significantly interfere with the ability of such national bank or wholesale financial institution to engage, directly or indirectly, or in conjunction with an affiliate referred to in paragraph (1), in any activity as authorized under section 6 or 10 of this Act or section 17(i) of the Securities Exchange Act of 1934.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 7(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1846(a)) is amended by striking "No provision" and inserting "Except as provided in subsection (c), no provision".

SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

(a) IN GENERAL.—Section 3(g)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(g)(2)) is amended to read as follows:

"(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.".

SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OFFICES.

(a) IN GENERAL.—Section 109(d) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a(d)) is amended—

(1) by inserting ", the Financial Services Act of 1997," after "pursuant to this title"; and

(2) by inserting "or such Act" after "made by this title".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 109(e)(4) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a(e)(4)) is amended by inserting "and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)" before the period.

SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIREMENTS.

Section 42(d)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1831r–1(d)(4)(A)) is amended by inserting "and any bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)" before the period.

SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE BANKS.

Section 4(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)) is amended—

(1) in paragraph (2)(A)(ii)—

(A) by striking "and" at the end of subclause (IX);

(B) by inserting "and" after the semicolon at the end of subclause (X); and

(C) by inserting after subclause (X) the following new subclause:

"(XI) assets that are derived from, or are incidental to, activities in which institutions described in section 2(c)(2)(F) are permitted to engage,";

(2) in paragraph (2), by striking subparagraph (B) and inserting the following new subparagraphs:

"(B) any bank subsidiary of such company engages in any activity in which the bank was not lawfully engaged as of March 5, 1987, unless the bank is well managed and well capitalized;

"(C) any bank subsidiary of such company both—

"(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

"(ii) engages in the business of making commercial loans (and, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

"(D) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in such bank's account at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).."; and

(3) by striking paragraphs (3) and (4) and inserting the following new paragraphs:

"(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of paragraph (2)(D), an overdraft is described in this paragraph if—

"(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

"(B) such overdraft—

"(i) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

"(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

"(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—

"(A) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; and

"(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.".

Subtitle B—Streamlining Supervision of Financial Holding Companies

SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY SUPERVISION.

Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

"(c) REPORTS AND EXAMINATIONS.—

"(1) REPORTS.—

"(A) IN GENERAL.—The Board from time to time may require any bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

"(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the holding company; and

"(ii) compliance by the company or subsidiary with applicable provisions of this Act.

"(B) USE OF EXISTING REPORTS.—

"(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

"(ii) AVAILABILITY.—A bank holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

"(iii) REQUIRED USE OF PUBLICLY REPORTED INFORMATION.—The Board shall, to the fullest extent possible, accept in fulfillment of any reporting or recordkeeping requirements under this Act information that is otherwise required to be reported publicly and externally audited financial statements.

"(iv) REPORTS FILED WITH OTHER AGENCIES.—In the event the Board requires a report from a functionally regulated nondepository institution subsidiary of a bank holding company of a kind that is not required by another Federal or State regulator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or its subsidiary depository institution or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.

"(C) DEFINITION.—For purposes of this subsection, the term 'functionally regulated nondepository institution' means—

"(i) a broker or dealer registered under the Securities Exchange Act of 1934;

"(ii) an investment adviser registered under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

"(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and

"(iv) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.

"(2) EXAMINATIONS.—

"(A) EXAMINATION AUTHORITY.—

"(i) IN GENERAL.—The Board may make examinations of each bank holding company and each subsidiary of a bank holding company.

"(ii) FUNCTIONALLY REGULATED NONDEPOSITORY INSTITUTION SUBSIDIARIES.—Notwithstanding clause (i), the Board may make examinations of a functionally regulated nondepository institution subsidiary of a bank holding company only if—

"(I) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution, or

"(II) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated depository institution and the Board cannot make such determination through examination of the affiliated depository institution or bank holding company.

"(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND SUBSIDIARIES.—Subject to subparagraph (A)(ii), the Board may make examinations under subparagraph (A)(i) of each bank holding company and each subsidiary of such holding company in order to—

"(i) inform the Board of the nature of the operations and financial condition of the holding company and such subsidiaries;

"(ii) inform the Board of—

"(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and

"(II) the systems for monitoring and controlling such risks; and

"(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and its affiliates.

"(C) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—

"(i) the bank holding company; and

"(ii) any subsidiary of the holding company that, because of—

"(I) the size, condition, or activities of the subsidiary;

"(II) the nature or size of transactions between such subsidiary and any depository institution which is also a subsidiary of such holding company; or

"(III) the centralization of functions within the holding company system,

could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.

"(D) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use, for the purposes of this paragraph, the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

"(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examination made of—

"(i) any registered broker or dealer or registered investment adviser by or on behalf of the Securities and Exchange Commission;

"(ii) any licensed insurance company by or on behalf of any state regulatory authority responsible for the supervision of insurance companies; and

"(iii) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

"(3) CAPITAL.—

"(A) IN GENERAL.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any subsidiary of a financial holding company that is not a depository institution and—

"(i) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority; or

"(ii) is registered as an investment adviser under the Investment Advisers Act of 1940.

"(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

"(4) TRANSFER OF BOARD AUTHORITY TO APPROPRIATE FEDERAL BANKING AGENCY.—

"(A) IN GENERAL.—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company as the appropriate Federal banking agency for the bank holding company.

"(B) AUTHORITY TRANSFERRED.—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act to—

"(i) examine and require reports from the bank holding company and any affiliate of such company (other than a depository institution) under section 5;

"(ii) approve or disapprove applications or transactions under section 3;

"(iii) take actions and impose penalties under subsections (e) and (f) of section 5 and section 8; and

"(iv) take actions regarding the holding company, any affiliate of the holding company (other than a depository institution), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any other statute which the Board may designate.

"(C) AGENCY ORDERS.—Section 9 (of this Act) and section 105 of the Bank Holding Company Act Amendments of 1970 shall apply to orders issued by an agency designated under subparagraph (A) in the same manner such sections apply to orders issued by the Board.

"(5) FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE ACTIVITIES.—The Board shall defer to—

"(A) the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies; and

"(B) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.".

SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT FOR FINANCIAL HOLDING COMPANIES.

(a) PREVENTION OF DUPLICATIVE FILINGS.—Section 5(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(a)) is amended by adding the following new sentence at the end: "A declaration filed in accordance with section 6(b)(1)(D) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.".

(b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(e)(1)) is amended—

(1) by striking "Financial Institutions Supervisory Act of 1966, order" and inserting "Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—

"(A) order"; and

(2) by striking "shareholders of the bank holding company. Such distribution" and inserting "shareholders of the bank holding company; or

"(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

"The distribution referred to in subparagraph (A)".

SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by adding at the end the following new subsection:

"(g) AUTHORITY OF STATE INSURANCE REGULATOR AND THE SECURITIES AND EXCHANGE COMMISSION.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable if—

"(A) such funds or assets are to be provided by—

"(i) a bank holding company that is an insurance company or is a broker or dealer registered under the Securities Exchange Act of 1934; or

"(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under such Act; and

"(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker or dealer, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker or dealer, as the case may be.

"(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, which is an insurance company or a broker or dealer described in paragraph (1)(A) to provide funds or assets to an insured depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.

"(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in such paragraph, the Board may order the bank holding company to divest the insured depository institution within 180 days of receiving notice or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.

"(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.".

SEC. 114. PRUDENTIAL SAFEGUARDS.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by inserting after subsection (g) (as added by section 113 of this subtitle) the following new subsection:

"(h) PRUDENTIAL SAFEGUARDS.—

"(1) IN GENERAL.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a depository institution subsidiary of a bank holding company and any affiliate of such depository

institution (other than a subsidiary of such institution) which the Board finds is consistent with the public interest, the purposes of this Act, the Financial Services Act of 1997, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies and the standards in paragraph (2).

"(2) STANDARDS.—The Board may exercise authority under paragraph (1) if the Board finds that such action will have any of the following effects:

"(A) Avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund.

"(B) Enhance the financial stability of bank holding companies.

"(C) Avoid conflicts of interest or other abuses.

"(D) Enhance the privacy of customers of depository institutions.

"(E) Promote the application of national treatment and equality of competitive opportunity between nonbank affiliates owned or controlled by domestic bank holding companies and nonbank affiliates owned or controlled by foreign banks operating in the United States.

"(3) REVIEW.—The Board shall regularly—

"(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

"(B) modify or eliminate any restriction or requirement the Board finds is no longer required for such purposes.".

SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.

(a) EXCLUSIVE COMMISSION AUTHORITY.—

(1) IN GENERAL.—The Commission shall be the sole Federal agency with authority to inspect and examine any registered investment company that is not a bank holding company.

(2) PROHIBITION ON BANKING AGENCIES.—A Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.

(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term "bank holding company" has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

(2) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(3) FEDERAL BANKING AGENCY.—The term "Federal banking agency" has the meaning given to such term in section 3(z) of the Federal Deposit Insurance Act.

(4) REGISTERED INVESTMENT COMPANY.—The term "registered investment company" means an investment company which is registered with the Commission under the Investment Company Act of 1940.

SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by inserting after section 10 the following new section:

"SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.

"(a) LIMITATION ON DIRECT ACTION.—

"(1) IN GENERAL.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a regulated subsidiary of a bank holding company unless the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—

"(A) the financial safety, soundness, or stability of an affiliated depository institution; or

"(B) the domestic or international payment system.

"(2) CRITERIA FOR BOARD ACTION.—The Board shall not take action otherwise permitted under paragraph (1) unless the Board finds that it is not reasonably possible to effectively protect against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.

"(b) LIMITATION ON INDIRECT ACTION.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a financial holding company or an investment bank holding company where the purpose or effect of doing so would be to take action indirectly against or with respect to a regulated subsidiary that may not be taken directly against or with respect to such subsidiary in accordance with subsection (a).

"(c) ACTIONS SPECIFICALLY AUTHORIZED.—Notwithstanding subsection (a), the Board may take action under this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a regulated subsidiary with Federal law that the Board has specific jurisdiction to enforce against such subsidiary.

"(d) REGULATED SUBSIDIARY DEFINED.—For purposes of this section, the term 'regulated subsidiary' means any company that is not a bank holding company and is—

"(1) a broker or dealer registered under the Securities Exchange Act of 1934;

"(2) an investment adviser registered under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

"(3) an investment company registered under the Investment Company Act of 1940;

"(4) an insurance company or an insurance agency subject to supervision by a State insurance commission, agency, or similar authority; or

"(5) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.".

Subtitle C—Subsidiaries of National Banks

SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF NATIONAL BANKS.

(a) FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.—Chapter one of title LXII of the Revised Statutes of United States (12 U.S.C. 21 et seq.) is amended—

(1) by redesignating section 5136A as section 5136C; and

(2) by inserting after section 5136 (12 U.S.C. 24) the following new section:

"SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.

"(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

"(1) EXCLUSIVE AUTHORITY.—No provision of section 5136 or any other provision of this title LXII of the Revised Statutes shall be construed as authorizing a subsidiary of a national bank to engage in, or own any share of any company engaged in, any activity that—

"(A) is not permissible for a national bank to engage in directly; or

"(B) is conducted under terms or conditions other than those that would govern the conduct of such activity by a national bank,

unless a national bank is specifically authorized by the express terms of a Federal statute and not by implication or interpretation to acquire shares of or control such subsidiary, such as by paragraph (2) of this subsection and section 25A of the Federal Reserve Act.

"(2) SPECIFIC AUTHORIZATION TO CONDUCT INSURANCE AGENCY ACTIVITIES.—A national bank may control a company engaged in general insurance agency activities if—

"(A) the national bank is well capitalized and well managed, and has achieved a rating of satisfactory or better at the most recent examination of the bank under the Community Reinvestment Act of 1977;

"(B) all depository institution affiliates of the national bank are well capitalized and well managed, and have achieved a rating of satisfactory or better at the most recent examination of each such depository institution under the Community Reinvestment Act of 1977; and

"(C) the bank has received the approval of the Comptroller of the Currency.

"(3) DEFINITIONS.—

"(A) COMPANY; CONTROL; SUBSIDIARY.—The terms 'company', 'control', and 'subsidiary' have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956.

"(B) WELL CAPITALIZED.—The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act and, for purposes of this section, the Comptroller shall have exclusive jurisdiction to determine whether a national bank is well capitalized.

"(C) WELL MANAGED.—The term 'well managed' means—

"(i) in the case of a bank that has been examined, unless otherwise determined in writing by the Comptroller—

"(I) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the bank; and

"(II) at least a rating of 2 for management, if that rating is given; or

"(ii) in the case of any national bank that has not been examined, the existence and use of managerial resources that the Comptroller determines are satisfactory.

"(b) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes affiliated with a national bank during the 24-month period preceding the submission of an application to acquire a subsidiary under subsection (a)(2), and any depository institution which becomes so affiliated after the approval of such application, may be excluded for purposes of subsection (a)(2)(B) during the 24-month period beginning on the date of such acquisition if—

"(1) the depository institution has submitted an affirmative plan to the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) to take such action as may be necessary in order for such institution to achieve a 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and

"(2) the plan has been approved by the appropriate Federal banking agency.".

(b) LIMITATION ON CERTAIN ACTIVITIES IN SUBSIDIARIES.—Section 21(a)(1) of the Banking Act of 1933 (12 U.S.C. 378(a)(1)) is amended by inserting ", or to be a subsidiary of any person, firm, corporation, association, business trust, or similar organization engaged (unless such subsidiary was engaged in such securities activities as of September 15, 1997)," after "to engage at the same time".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) ANTITYING.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is amended by adding at the end the following new sentence: "For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.".

(2) SECTION 23B.—Section 23B(a) of the Federal Reserve Act (12 U.S.C. 371c–1(a)) is amended by adding at the end the following new paragraph:

"(4) INSURANCE SUBSIDIARY OF NATIONAL BANK.—For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be an affiliate of the national bank and not a subsidiary of the bank."

(d) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended—

(1) by redesignating the item relating to section 5136A as section 5136C; and

(2) by inserting after the item relating to section 5136 the following new item:

"5136A. Financial subsidiaries of national banks.".

SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY INSTITUTION LIABILITY FOR OBLIGATIONS OF AFFILIATES.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1007 the following new section:

"§ 1008. Misrepresentations regarding financial institution liability for obligations of affiliates

"(a) IN GENERAL.—No institution-affiliated party of an insured depository institution or institution-affiliated party of a subsidiary or affiliate of an insured depository institution shall fraudulently represent that the institution is or will be liable for any obligation of a subsidiary or other affiliate of the institution.

"(b) CRIMINAL PENALTY.—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 1 year, or both.

"(c) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this section, the term 'institution-affiliated party' with respect to a subsidiary or affiliate has the same meaning as in section 3 except references to an insured depository institution shall be deemed to be references to a subsidiary or affiliate of an insured depository institution.

"(d) OTHER DEFINITIONS.—For purposes of this section, the terms 'affiliate', 'insured depository institution', and 'subsidiary' have same meanings as in section 3 of the Federal Deposit Insurance Act.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1007 the following new item:

"1008. Misrepresentations regarding financial institution liability for obligations of affiliates.".

SEC. 123. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.

Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by striking the paragraph designated as "(m)" and inserting "(m) [Repealed]".

Subtitle D—Investment Bank Holding Companies; Wholesale Financial Institutions

CHAPTER 1—INVESTMENT BANK HOLDING COMPANIES

SEC. 131. INVESTMENT BANK HOLDING COMPANIES ESTABLISHED.

(a) DEFINITION AND SUPERVISION.—Section 10 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended to read as follows:

"SEC. 10. INVESTMENT BANK HOLDING COMPANIES.

"(a) COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—

"(1) IN GENERAL.—Any company shall be supervised in accordance with this section if the company—

"(A) either—

"(i) is substantially engaged in the securities business, as provided in paragraph (2); or

"(ii) was, as of the date of the enactment of the Financial Services Act of 1997, a bank holding company;

"(B) controls 1 or more wholesale financial institutions;

"(C) does not control—

"(i) a bank other than a wholesale financial institution;

"(ii) an insured bank other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2); or

"(iii) a savings association; and

"(D) is not a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978).

"(2) SUBSTANTIALLY ENGAGED IN SECURITIES BUSINESS.—A company shall be treated as being substantially engaged in the securities business for purposes of this section if—

"(A) the company controls 1 or more registered securities brokers or dealers; and

"(B) either—

"(i) the annual total consolidated net revenues derived by the company and its subsidiaries from effecting transactions in or buying and selling securities as a broker or dealer represent at least 35 percent of the annual total consolidated net revenues of the company; or

"(ii) the registered brokers or dealers controlled by the company have in the aggregate total consolidated equity capital and qualifying subordinated debt (based on an average for the 4 preceding calendar quarters) of more than $750,000,000 and such total equity capital and qualifying subordinated debt does not fall below $500,000,000 (based on an average for the 4 preceding calendar quarters).

"(3) SAVINGS ASSOCIATION TRANSITION PERIOD.—Notwithstanding paragraph (1)(C)(iii), the Board may permit a company that controls a savings association and that otherwise meets the requirements of paragraph (1) to become supervised under paragraph (1), if the company divests control of any such savings association within such period not to exceed 5 years after becoming supervised under paragraph (1) as permitted by the Board.

"(b) COMPANIES SUPERVISED BY SECURITIES AND EXCHANGE COMMISSION.—

"(1) IN GENERAL.—Except as provided in paragraph (3), any company that is described in subsection (a)(1) shall be subject to supervision by the Commission under section 17(i) of the Securities Exchange Act of 1934 and not by the Board and shall, for purposes of this Act, be treated as an SEC supervised investment bank holding company, if the company—

"(A) is substantially engaged in the securities business, as provided in subsection (a)(2); and

"(B) controls 1 or more wholesale financial institutions that in the aggregate have—

"(i) consolidated risk-weighted assets that on an annual basis are less than $15,000,000,000; and

"(ii) annual gross revenues that represent less than 25 percent of the consolidated annual gross revenues of the company.

"(2) DOLLAR AMOUNT.—

"(A) RISK-WEIGHTED ASSETS.—For purposes of paragraph (1)(A), the consolidated risk-weighted assets of a wholesale financial institution shall—

"(i) be based on the average consolidated risk-weighted assets of the institution for the four previous calendar quarters; and

"(ii) include risk-weighted claims on affiliates only to the extent such claims, in the aggregate, exceed the aggregate risk—weighted claims of affiliates on the wholesale financial institution.

"(B) TREATMENT OF SUBSIDIARIES.—For purposes of subparagraph (A)(ii), the term "affiliates" shall not include any subsidiary of the wholesale financial institution.

"(C) INDEXED GROWTH.—The dollar amount contained in paragraph (1)(A) shall be adjusted annually after December 31, 1998, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

"(3) ELECTION.—

"(A) FILING.—An SEC supervised investment bank holding company may elect to be supervised by the Board and not the Commission by filing with the Board the notice of withdrawal described in section 17(i)(3)(B) of the Securities Exchange Act of 1934.

"(B) EFFECTIVE DATE OF TRANSFER OF AUTHORITY.—If a company files an election under subparagraph (A), the Board shall, subject to any conditions, restrictions or limitations as the Board deems necessary or appropriate after consultation with the Commission, assume full supervisory authority and responsibility for the company under this Act immediately upon the effectiveness of the company's notice of withdrawal under section 17(i) of the Securities Exchange Act of 1934.

"(C) RETENTION OF JURISDICTION.—The filing of a notice under subparagraph (A) or under section 17(i) of the Securities Exchange Act of 1934 shall not affect the jurisdiction and authority of the Commission to take any action authorized by this section or the Federal securities laws against any person with respect to any action (or failure to act) that occurs before the transfer of supervisory authority to the Board.

"(4) REVOCATION OF ELECTION.—

"(A) FILING.—

"(i) IN GENERAL.—An investment bank holding company that—

"(I) has filed an election under paragraph (3)(A):

"(II) meets the requirements of paragraph (1); and

"(III) is substantially engaged in the securities business, as provided in subsection (a)(2),

may revoke its election to be supervised by the Board and thereby become supervised by the Commission by filing with the Board and the Commission a notice of revocation in such form as the Board may prescribe.

"(ii) CONDITIONS.—Any revocation filed under clause (i) shall be subject to any conditions, restrictions or limitations as the Board finds to be necessary or appropriate after consultation with the Commission.

"(B) EFFECTIVE DATE OF TRANSFER OF AUTHORITY.—If the investment bank holding company files a notice under subparagraph (A), the Board shall discontinue supervision of the investment bank holding company on the later of—

"(i) the end of the 45-day period beginning on the date of receipt by the Board and the Commission of the notice of revocation; or

"(ii) such shorter or longer period as the Board shall determine, after consultation with the Commission, is necessary or appropriate to prevent evasion of the purposes of this Act.

"(C) RETENTION OF JURISDICTION.—The filing of a notice under subparagraph (A) shall not affect the jurisdiction and authority of the Board to take any action authorized by this section against any person with respect to any action (or failure to act) that occurs before the transfer of supervisory authority to the Commission.

"(D) LIMITATION ON REVOCATIONS.—Without the consent of the Board and the Commission, an investment bank holding company may file a revocation of election under subparagraph (A) only once during any 5-year period.

"(5) LIMITED TREATMENT AS BANK HOLDING COMPANIES.—Notwithstanding section 2(a), an SEC supervised investment bank holding company shall not be a bank holding company except for purposes of—

"(A) section 2(g), section 3, section 5(f), section 7, section 8, and section 11 of this Act;

"(B) section 3, section 7(j) and subsections (b) through (n), (s), (u) and (v) of section 8 of the Federal Deposit Insurance Act; and

"(C) section 106 of the 1970 Amendments to the Bank Holding Company Act.

"(c) COMPANIES SUPERVISED BY THE BOARD.—

"(1) BOARD SUPERVISION.—Any company described in subsection (a)(1) that is not supervised by the Commission under section 17(i) of the Securities Exchange Act of 1934 shall be supervised by the Board and shall, for purposes of this Act, be a Board supervised investment bank holding company.

"(2) IN GENERAL.—The provisions of this section shall govern the reporting, examination, and capital requirements of Board supervised investment bank holding companies.

"(3) REPORTS.—

"(A) IN GENERAL.—The Board from time to time may require any Board supervised investment bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

"(i) the company's or subsidiary's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions with depository institution subsidiaries of the holding company; and

"(ii) the extent to which the company or subsidiary has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

"(B) USE OF EXISTING REPORTS.—

"(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that the investment bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

"(ii) AVAILABILITY.—An investment bank holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

"(C) EXEMPTIONS FROM REPORTING REQUIREMENTS.—

"(i) IN GENERAL.—The Board may, by regulation or order, exempt any company or class of companies, under such terms and conditions and for such periods as the Board shall provide in such regulation or order, from the provisions of this paragraph and any regulation prescribed under this paragraph.

"(ii) CRITERIA FOR CONSIDERATION.—In making any determination under clause (i) with regard to any exemption under such clause, the Board shall consider, among such other factors as the Board may determine to be appropriate, the following factors:

"(I) Whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978) or a foreign regulatory authority of a similar type.

"(II) The primary business of the company.

"(III) The nature and extent of the domestic and foreign regulation of the activities of the company.

"(4) EXAMINATIONS.—

"(A) LIMITED USE OF EXAMINATION AUTHORITY.—The Board may make examinations of each Board supervised investment bank holding company and each subsidiary of such company in order to—

"(i) inform the Board regarding the nature of the operations and financial condition of the investment bank holding company and its subsidiaries;

"(ii) inform the Board regarding—

"(I) the financial and operational risks within the investment bank holding company system that may affect any depository institution owned by such holding company; and

"(II) the systems of the holding company and its subsidiaries for monitoring and controlling those risks; and

"(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any depository institution controlled by the investment bank holding company and any of the company's other subsidiaries.

"(B) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of an investment bank holding company under this paragraph to—

"(i) the holding company; and

"(ii) any subsidiary (other than an insured depository institution subsidiary) of the holding company that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions between such subsidiary and any affiliated depository institution, or the centralization of functions within the holding company system, could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.

"(C) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination of depository institutions made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision or the appropriate State depository institution supervisory authority for the purposes of this section.

"(D) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and by instead reviewing the reports of examination made of—

"(i) any registered broker or dealer or any registered investment adviser by or on behalf of the Commission; and

"(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

"(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any nonpublic information required to be reported under this paragraph, or any information supplied to the Board by any domestic or foreign regulatory agency, that relates to the financial or operational condition of any investment bank holding company or any subsidiary of such company.

"(ii) COMPLIANCE WITH REQUESTS FOR INFORMATION.—No provision of this subparagraph shall be construed as authorizing the Board to withhold information from the Congress, or preventing the Board from complying with a request for information from any other Federal department or agency for purposes within the scope of such department's or agency's jurisdiction, or from complying with any order of a court of competent jurisdiction in an action brought by the United States or the Board.

"(iii) COORDINATION WITH OTHER LAW.—For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered to be a statute described in subsection (b)(3)(B) of such section.

"(iv) DESIGNATION OF CONFIDENTIAL INFORMATION.—In prescribing regulations to carry out the requirements of this subsection, the Board shall designate information described in or obtained pursuant to this paragraph as confidential information.

"(F) COSTS.—The cost of any examination conducted by the Board under this section may be assessed against, and made payable by, the investment bank holding company.

"(5) CAPITAL ADEQUACY GUIDELINES.—

"(A) CAPITAL ADEQUACY PROVISIONS.—Subject to the requirements of, and solely in accordance with, the terms of this paragraph, the Board may adopt capital adequacy rules or guidelines for Board supervised investment bank holding companies.

"(B) METHOD OF CALCULATION.—In developing rules or guidelines under this paragraph, the following provisions shall apply:

"(i) FOCUS ON DOUBLE LEVERAGE.—The Board shall focus on the use by investment bank holding companies of debt and other liabilities to fund capital investments in subsidiaries.

"(ii) NO UNWEIGHTED CAPITAL RATIO.—The Board shall not, by regulation, guideline, order, or otherwise, impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

"(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that—

"(I) is not a depository institution; and

"(II) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority.

"(iv) LIMITATION.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that is not a depository institution and that is registered as an investment adviser under the Investment Advisers Act of 1940, except that this clause shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

"(v) APPROPRIATE EXCLUSIONS.—The Board shall take full account of—

"(I) the capital requirements made applicable to any subsidiary that is not a depository institution by another Federal regulatory authority or State insurance authority; and

"(II) industry norms for capitalization of a company's unregulated subsidiaries and activities.

"(vi) INTERNAL RISK MANAGEMENT MODELS.—The Board may incorporate internal risk management models of investment bank holding companies into its capital adequacy guidelines or rules and may take account of the extent to which resources of a subsidiary depository institution may be used to service the debt or other liabilities of the investment bank holding company.

"(d) NONFINANCIAL ACTIVITIES AND INVESTMENTS.—

"(1) AUTHORITY FOR LIMITED AMOUNTS OF NEW ACTIVITIES AND INVESTMENTS.—

"(A) IN GENERAL.—Notwithstanding section 4(a), a Board supervised investment bank holding company may engage in activities which are not (or have not been determined to be) financial in nature or incidental to activities which are financial in nature, or acquire and retain ownership and control of the shares of a company engaged in such activities if—

"(i) the aggregate annual gross revenues derived from all such activities and of all such companies does not exceed 5 percent of the consolidated annual gross revenues of the investment bank holding company or, in the case of a foreign bank or any company that owns or controls a foreign bank, the aggregate annual gross revenues derived from any such activities in the United States does not exceed 5 percent of the consolidated annual gross revenues of the foreign bank or company in the United States derived from any branch, agency, commercial lending company, or depository institution controlled by the foreign bank or company and any subsidiary engaged in the United States in activities permissible under section 4 or 6 or this subsection;

"(ii) the consolidated total assets of any company the shares of which are acquired pursuant to this subsection are less than $750,000,000 at the time the shares are acquired by the investment bank holding company; and

"(iii) such company provides notice to the Board within 30 days of commencing the activity or acquiring the ownership or control.

"(B) INCLUSION OF GRANDFATHERED ACTIVITIES.—For purposes of determining compliance with the limits contained in subparagraph (A), the gross revenues derived from all activities conducted and companies the shares of which are held under paragraph (2) shall be considered to be derived or held under this paragraph.

"(C) REPORT.—No later than 5 years after the date of enactment of the Financial Services Act of 1997, the Board shall submit to the Congress a report regarding the activities conducted and companies held pursuant to this paragraph or section 17(i)(7)(C) of the Securities Exchange Act of 1934 and the effect, if any, that affiliations permitted under those provisions have had on affiliated depository institutions. The report shall include recommendations regarding the appropriateness of retaining, increasing, or decreasing the limits contained in those provisions. In preparing the report, the Board shall consult with and incorporate the views of the Commission.

"(2) GRANDFATHERED ACTIVITIES.—

"(A) IN GENERAL.—Notwithstanding paragraph (1)(A) and section 4(a), a company that becomes an investment bank holding company may continue to engage, directly or indirectly, in any activity and may retain ownership and control of shares of a company engaged in any activity if—

"(i) on the date of the enactment of the Financial Services Act of 1997, such investment bank holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and

"(ii) the company engaged in such activity continues to engage only in the same activities that such company conducted on the date of the enactment of the Financial Services Act of 1997, and other activities permissible under this Act.

"(B) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—An investment bank holding company that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of such investment bank holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under section 6(c).

"(C) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) or (g) of section 6 may engage in any activity or own any shares pursuant to this paragraph or paragraph (1).

"(3) COMMODITIES.—

"(A) IN GENERAL.—Notwithstanding section 4(a), an investment bank holding company which was predominately engaged as of January 1, 1997, in securities activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1997, if such investment bank holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1997, in the United States.

"(B) LIMITATION.—Notwithstanding paragraph (1)(A)(i), the attributed aggregate investment by an investment bank holding company in activities permitted under this paragraph and not otherwise permitted for all bank holding companies under this Act may not exceed 5 percent of the capital of the investment bank holding company, except that the Board may increase such percentage of capital by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act.

"(C) ATTRIBUTED INVESTMENT AMOUNT.—For purposes of subparagraph (B), the amount of the investment by an investment bank holding company which are attributable to activities described in such subparagraph shall be determined pursuant to regulations issued by the Board which attribute capital on the basis of such activities in relation to all activities of the company.

"(4) CROSS MARKETING RESTRICTIONS.—A Board supervised investment bank holding company shall not permit—

"(A) any company whose shares it owns or controls pursuant to paragraph (1), (2), or (3) to offer or market any product or service of an affiliated wholesale financial institution; or

"(B) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such investment bank holding company pursuant to such paragraphs.

"(e) QUALIFICATION OF FOREIGN BANK AS INVESTMENT BANK HOLDING COMPANY.—

"(1) IN GENERAL.—Any foreign bank, or any company that owns or controls a foreign bank, that—

"(A) operates a branch, agency, or commercial lending company in the United States, including a foreign bank or company that owns or controls a wholesale financial institution; and

"(B) owns, controls, or is affiliated with a security affiliate that engages in underwriting corporate equity securities,

may request a determination from the Board that such bank or company be treated as a Board supervised investment bank holding company for purposes of subsection (d).

"(2) CONDITIONS FOR TREATMENT AS AN INVESTMENT BANK HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as an investment bank holding company unless the bank and company meet and continue to meet the following criteria:

"(A) NO INSURED DEPOSITS.—No deposits held directly by a foreign bank or through an affiliate are insured under the Federal Deposit Insurance Act.

"(B) CAPITAL STANDARDS.—The foreign bank meets risk-based capital standards comparable to the capital standards required for a wholesale financial institution, giving due regard to the principle of national treatment and equality of competitive opportunity.

"(C) TRANSACTION WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any securities affiliate or company in which the foreign bank (or any company that owns or controls such foreign bank) has invested pursuant to subsection (d) comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the bank were a member bank.

"(3) TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.—Any foreign bank which is, or is affiliated with a company which is, treated as an investment bank holding company under this subsection shall be treated as a wholesale financial institution for purposes of subsection (d)(4) of this section and subsections (c)(1)(C) and (c)(3) of section 9B of the Federal Reserve Act, and any such foreign bank or company shall be subject to paragraphs (3), (4), and (5) of section 9B(d) of the Federal Reserve Act, except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

"(4) NONAPPLICABILITY OF OTHER EXEMPTION.—Any foreign bank or company which is treated as an investment bank holding company under this subsection shall not be eligible for any exception described in section 2(h).

"(5) SUPERVISION OF FOREIGN BANK WHICH MAINTAINS NO BANKING PRESENCE OTHER THAN CONTROL OF A WHOLESALE FINANCIAL INSTITUTION.—A foreign bank that owns or controls a wholesale financial institution but does not operate a branch, agency, or commercial lending company in the United States (and any company that owns or controls such foreign bank) may request a determination from the Board that such bank or company be treated as a Board supervised investment bank holding company for purposes of subsection (d), except that such bank or company shall be subject to the restrictions of paragraph (4) of this subsection.

"(6) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the authority of the Board under the International Banking Act of 1978 with respect to the regulation, supervision, or examination of foreign banks and their offices and affiliates in the United States.

"(7) APPLICABILITY OF COMMUNITY REINVESTMENT ACT OF 1977.—The branches in the United States of a foreign bank that is, or is affiliated with a company that is, treated as a Board supervised investment bank holding company shall be subject to section 9B(b)(11) of the Federal Reserve Act as if the foreign bank were a wholesale financial institution under such section. The Board and the Comptroller of the Currency shall apply the provisions of sections 803(2), 804,

and 807(1) of the Community Reinvestment Act of 1977 to branches of foreign banks which receive only such deposits as are permissible for receipt by a corporation organized under section 25A of the Federal Reserve Act, in the same manner and to the same extent such sections apply to such a corporation.

"(f) BOARD BACKUP ENFORCEMENT AND EXAMINATION AUTHORITY.—

"(1) ENFORCEMENT AUTHORITY.—

"(A) IN GENERAL.—The Board may take any action or initiate any investigation or proceeding under this Act or the Federal Deposit Insurance Act involving any SEC supervised investment bank holding company, any subsidiary of such a company, or any institution-affiliated party of such a company or subsidiary for the purpose of enforcing compliance with the applicable provisions of this Act, the 1970 Amendments to the Bank Holding Company Act of 1956, section 17(i) of the Securities Exchange Act of 1934, the Federal Deposit Insurance Act, or the Federal Reserve Act.

"(B) PRIOR CONSULTATION AND OPPORTUNITY TO CORRECT.—

"(i) NOTICE OF PROPOSED ACTION.—At least 30 days before initiating any action, investigation, or proceeding under this subsection (or such shorter period as the Board and Commission may agree), the Board shall provide the Commission with notice of the Board's proposed action, an explanation of the basis for such proposed action, and a recommendation for Commission action.

"(ii) BOARD ACTION.—If, after receipt of notice under clause (i), the Commission does not take the actions recommended by the Board or other actions deemed appropriate by the Board, the Board may initiate an action, investigation or proceeding under this subsection.

"(iii) EXIGENT CIRCUMSTANCES.—The Board may exercise its authority under paragraph (1)(A) without regard to the time period set forth in clause (i) if the Board finds that such action is necessary or appropriate in light of exigent circumstances.

"(2) BACKUP EXAMINATION.—

"(A) IN GENERAL.—In circumstances where examinations of Board supervised bank holding companies and subsidiaries of such holding companies by the Board are permissible under subparagraphs (A) and (B) of section 5(c)(2), the Board may make examinations of any SEC supervised investment bank holding company and any subsidiary of such company for the purpose of monitoring and enforcing compliance by the company or any subsidiary of such company with the laws described in subparagraph (E).

"(B) RESTRICTED FOCUS.—The Board shall limit the focus and scope of any examination permitted under subparagraph (A) to those transactions, policies, procedures, systems, or records that are reasonably necessary to monitor and enforce compliance by the company or any subsidiary of the company with the laws described in subparagraph (E).

"(C) DEFERENCE TO OTHER EXAMINATIONS.—To the fullest extent possible, the Board shall address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examinations made of—

"(i) any registered broker or dealer or registered investment adviser by or on behalf of the Commission; and

"(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

"(D) NOTIFICATION.—To the fullest extent possible, the Board shall notify the Commission before conducting any examination of a SEC supervised investment bank holding company.

"(E) DEFINITION.—For purposes of this subsection, the laws described in this subparagraph are this Act, section 17(i) of the Securities Exchange Act of 1934, and all Federal laws for which the Board has enforcement authority with respect to State member banks or bank holding companies or their subsidiaries.

"(g) INFORMATION SHARING.—The Board and the Comptroller of the Currency (in the case of a national wholesale financial institution) shall, upon request by the Commission, provide to the Commission such reports, records, or other information, including reports of examination or other confidential supervisory information, that the Board or the Comptroller has available concerning a wholesale financial institution (or any subsidiary of a wholesale financial institution) that is controlled by a SEC supervised investment bank holding company to assist the Commission in carrying out its responsibilities under this Act or the Federal securities laws.

"(h) DEFERENCE TO COMMISSION.—The Board shall defer to the Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws relating to the activities, conduct and operations of registered brokers, dealers, investment advisers, and investment companies.

"(i) CONSULTATION.—The Board shall consult with the Commission concerning the exercise of the Board's authority and responsibility under section 6(c) to assure, to the fullest extent possible, the consistency of interpretation and the maintenance of competitive equality.".

(b) UNINSURED STATE BANKS.—Section 9 of the Federal Reserve Act (U.S.C. 321 et seq.) is amended by adding at the end the following new paragraph:

"(24) ENFORCEMENT AUTHORITY OVER UNINSURED STATE MEMBER BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured State member bank in the same manner and to the same extent such provisions apply to an insured State member bank and any reference in any such provision to 'insured depository institution' shall be deemed to be a reference to 'uninsured State member bank' for purposes of this paragraph.".

SEC. 132. AUTHORIZATION TO RELEASE REPORTS.

(a) FEDERAL RESERVE ACT.—The last sentence of the 8th undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 326) is amended to read as follows: "The Board of Governors of the Federal Reserve System, at its discretion, may furnish reports of examination or other confidential supervisory information concerning State member banks or any other entities examined under any other authority of the Board to any Federal or State authorities with supervisory or regulatory authority over the examined entity, to officers, directors, or receivers of the examined entity, and to any other person that the Board determines to be proper.".

(b) COMMODITY FUTURES TRADING COMMISSION.—

(1) Section 1101(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(7)) is amended—

(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and

(B) by inserting after subparagraph (F) the following new subparagraph: "(G) the Commodity Futures Trading Commission; or" and

(2) Section 1112(e) of the Right to Financial Privacy Act (12 U.S.C. 3412(e)) is amended by striking "and the Securities and Exchange Commission" and inserting ", the Securities and Exchange Commission, and the Commodity Futures Trading Commission".

SEC. 133. CONFORMING AMENDMENTS.

(a) BANK HOLDING COMPANY ACT OF 1956.—

(1) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end the following new subsections:

"(p) WHOLESALE FINANCIAL INSTITUTION.—The term 'wholesale financial institution' means a wholesale financial institution subject to section 9B of the Federal Reserve Act.

"(q) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

"(r) DEPOSITORY INSTITUTION.—The term 'depository institution'—

"(1) has the meaning given to such term in section 3 of the Federal Deposit Insurance Act; and

"(2) includes a wholesale financial institution.".

(2) DEFINITION OF BANK INCLUDES WHOLESALE FINANCIAL INSTITUTION.—Section 2(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(1)) is amended by adding at the end the following new subparagraph:

"(C) A wholesale financial institution.".

(3) INCORPORATED DEFINITIONS.—Section 2(n) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(n)) is amended by inserting "'insured bank'," after "'in danger of default',".

(4) EXCEPTION TO DEPOSIT INSURANCE REQUIREMENT.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by adding at the end the following: "This subsection shall not apply to a wholesale financial institution."

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 3(q)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(2)(A)) is amended to read as follows:

"(A) any State member insured bank (except a District bank) and any wholesale financial institution as authorized pursuant to section 9B of the Federal Reserve Act;".

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.

(a) NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136A the following new section:

"SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.

"(a) AUTHORIZATION OF THE COMPTROLLER REQUIRED.—A national bank may apply to the Comptroller on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.

"(b) REGULATION.—A national wholesale financial institution may exercise, in accordance with such institution's articles of incorporation and regulations issued by the Comptroller, all the powers and privileges of a national bank formed in accordance with section 5133 of the Revised Statutes of the United States, subject to section 9B of the Federal Reserve Act and the limitations and restrictions contained therein.

"(c) COMMUNITY REINVESTMENT ACT OF 1977.—A national wholesale financial institution shall be subject to the Community Reinvestment Act of 1977.

"(d) EXAMINATION REPORTS.—The Comptroller of the Currency shall, to the fullest extent possible, use the report of examinations made by the Board of Governors of the Federal Reserve System of a wholesale financial institution.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136A (as added by section 121(d) of this title) the following new item:

"5136B. National wholesale financial institutions.".

(b) STATE WHOLESALE FINANCIAL INSTITUTIONS.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 9A the following new section:

"SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.

"(a) APPLICATION FOR MEMBERSHIP AS WHOLESALE FINANCIAL INSTITUTION.—

"(1) APPLICATION REQUIRED.—

"(A) IN GENERAL.—Any bank may apply to the Board of Governors of the Federal Reserve System to become a wholesale financial institution and, as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

"(B) TREATMENT AS MEMBER BANK.—Any application under subparagraph (A) shall be treated as an application under, and shall be subject to the provisions of, section 9.

"(2) INSURANCE TERMINATION.—No bank the deposits of which are insured under the Federal Deposit Insurance Act may become a wholesale financial institution unless it has met all requirements under that Act for voluntary termination of deposit insurance.

"(b) GENERAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

"(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, wholesale financial institutions shall be member banks and shall be subject to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks, except that a wholesale financial institution may terminate membership under this Act only with the prior written approval of the Board and on terms and conditions that the Board determines are appropriate to carry out the purposes of this Act.

"(2) PROMPT CORRECTIVE ACTION.—A wholesale financial institution shall be deemed to be an insured depository institution for purposes of section 38 of the Federal Deposit Insurance Act except that—

"(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions; and

"(B) all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board.

"(3) ENFORCEMENT AUTHORITY.—Subsections (j) and (k) of section 7, subsections (b) through (n), (s), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to a wholesale financial institution in the

same manner and to the same extent as such provisions apply to State member insured banks and any reference in such sections to an insured depository institution shall be deemed to include a reference to a wholesale financial institution.

"(4) CERTAIN OTHER STATUTES APPLICABLE.—A wholesale financial institution shall be deemed to be a banking institution, and the Board shall be the appropriate Federal banking agency for such bank and all such bank's affiliates, for purposes of the International Lending Supervision Act.

"(5) BANK MERGER ACT.—A wholesale financial institution shall be subject to sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent the wholesale financial institution would be subject to such sections if the institution were a State member insured bank.

"(6) BRANCHING.—Notwithstanding any other provision of law, a wholesale financial institution may establish and operate a branch at any location on such terms and conditions as established by the Board and, in the case of a State-chartered wholesale financial institution, with the approval of the Board, and, in the case of a national bank wholesale financial institution, with the approval of the Comptroller of the Currency.

"(7) ACTIVITIES OF OUT-OF-STATE BRANCHES OF WHOLESALE FINANCIAL INSTITUTIONS.—

"(A) GENERAL.—A State-chartered wholesale financial institution shall be deemed a State bank and an insured State bank and a national wholesale financial institution shall be deemed a national bank for purposes of paragraphs (1), (2), and (3) of section 24(j) of the Federal Deposit Insurance Act.

"(B) DEFINITIONS.—The following definitions shall apply solely for purposes of applying paragraph (1):

"(i) HOME STATE.—The term 'home State' means—

"(I) with respect to a national wholesale financial institution, the State in which the main office of the institution is located; and

"(II) with respect to a State-chartered wholesale financial institution, the State by which the institution is chartered.

"(ii) HOST STATE.—The term 'host State' means a State, other than the home State of the wholesale financial institution, in which the institution maintains, or seeks to establish and maintain, a branch.

"(iii) OUT-OF-STATE BANK.—The term 'out-of-State bank' means, with respect to any State, a wholesale financial institution whose home State is another State.

"(8) DISCRIMINATION REGARDING INTEREST RATES.—Section 27 of the Federal Deposit Insurance Act (12 U.S.C. 1831d) shall apply to State-chartered wholesale financial institutions in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such section to a State-chartered insured depository institution shall be deemed to include a reference to a State-chartered wholesale financial institution.

"(9) PREEMPTION OF STATE LAWS REQUIRING DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL INSTITUTIONS.—The appropriate State banking authority may grant a charter to a wholesale financial institution notwithstanding any State constitution or statute requiring that the institution obtain insurance of its deposits and any such State constitution or statute is hereby preempted solely for purposes of this paragraph.

"(10) PARITY FOR WHOLESALE FINANCIAL INSTITUTIONS.—A State bank that is a wholesale financial institution under this section shall have all of the rights, powers, privileges, and immunities (including those derived from status as a federally chartered institution) of and as if it were a national bank, subject to such terms and conditions as established by the Board.

"(11) COMMUNITY REINVESTMENT ACT OF 1977.—A State wholesale financial institution shall be subject to the Community Reinvestment Act of 1977.

"(c) SPECIFIC REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

"(1) LIMITATIONS ON DEPOSITS.—

"(A) MINIMUM AMOUNT.—

"(i) IN GENERAL.—No wholesale financial institution may receive initial deposits of $100,000 or less, other than on an incidental and occasional basis.

"(ii) LIMITATION ON DEPOSITS OF LESS THAN $100,000.—No wholesale financial institution may receive initial deposits of $100,000 or less if such deposits constitute more than 5 percent of the institution's total deposits.

"(B) NO DEPOSIT INSURANCE.—No deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

"(C) ADVERTISING AND DISCLOSURE.—The Board shall prescribe regulations pertaining to advertising and disclosure by wholesale financial institutions to ensure that each depositor is notified that deposits at the wholesale financial institution are not federally insured or otherwise guaranteed by the United States Government.

"(2) MINIMUM CAPITAL LEVELS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—

"(A) to account for the status of wholesale financial institutions as institutions that accept deposits that are not insured under the Federal Deposit Insurance Act; and

"(B) to provide for the safe and sound operation of the wholesale financial institution without undue risk to creditors or other persons, including Federal reserve banks, engaged in transactions with the bank.

"(3) ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In addition to any requirement otherwise applicable to State member insured banks or applicable, under this section, to wholesale financial institutions, the Board may impose, by regulation or order, upon wholesale financial institutions—

"(A) limitations on transactions, direct or indirect, with affiliates to prevent—

"(i) the transfer of risk to the deposit insurance funds; or

"(ii) an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank, including overdrafts at a Federal reserve bank;

"(B) special clearing balance requirements; and

"(C) any additional requirements that the Board determines to be appropriate or necessary to—

"(i) promote the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;

"(ii) prevent the transfer of risk to the deposit insurance funds; or

"(iii) protect creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

"(4) EXEMPTIONS FOR WHOLESALE FINANCIAL INSTITUTIONS.—The Board may, by regulation or order, exempt any wholesale financial institution from any provision applicable to a member bank that is not a wholesale financial institution, if the Board finds that such exemption is not inconsistent with—

"(A) the promotion of the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;

"(B) the protection of the deposit insurance funds; and

"(C) the protection of creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

"(5) LIMITATION ON TRANSACTIONS BETWEEN A WHOLESALE FINANCIAL INSTITUTION AND AN INSURED BANK.—For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial institution that is affiliated with an insured bank shall not be a bank.

"(6) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the Board's authority over member banks under any other provision of law, or to create any obligation for any Federal reserve bank to make, increase, renew, or extend any advance or discount under this Act to any member bank or other depository institution.

"(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

"(1) IN GENERAL.—A wholesale financial institution controlled by a company that is subject to section 17(i) of the Securities Exchange Act of 1934 or section 10 of the Bank Holding Company Act of 1956 must be well capitalized and well managed.

"(2) NOTICE TO COMPANY.—The Board shall promptly provide notice to a company described in paragraph (1) whenever any wholesale financial institution controlled by such company is not well capitalized or well managed.

"(3) AGREEMENT TO RESTORE INSTITUTION.—Within 45 days of receipt of a notice under paragraph (2) (or such additional period not to exceed 90 days as the Board may permit), the company shall execute an agreement acceptable to the

Board to restore the wholesale financial institution to compliance with all of the requirements of paragraph (1).

"(4) LIMITATIONS UNTIL INSTITUTION RESTORED.—Until the wholesale financial institution is restored to compliance with all of the requirements of paragraph (1), the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

"(5) FAILURE TO RESTORE.—If the company does not execute and implement an agreement in accordance with paragraph (3), comply with any limitation imposed under paragraph (4), restore the wholesale financial institution to well capitalized status within 180 days after receipt by the company of the notice described in paragraph (2), or restore the wholesale financial institution to well managed status within such period as the Board may permit, the company shall, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, divest control of its subsidiary depository institutions.

"(6) NOTICE TO COMMISSION REGARDING DIVESTITURES.—The Board shall notify the Commission if (A) a wholesale financial institutions controlled by a company subject to section 17(i) of the Securities Exchange Act of 1934 is not well capitalized or well managed, or (B) such a company is required to divest control of a subsidiary wholesale financial institution under this subsection.

"(7) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) WELL MANAGED.—The term 'well managed' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

"(B) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

"(e) CONSERVATORSHIP AUTHORITY.—

"(1) IN GENERAL.—The Board may appoint a conservator to take possession and control of a wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator for a national bank under section 203 of the Bank Conservation Act, and the conservator shall exercise the same powers, functions, and duties, subject to the same limitations, as are provided under such Act for conservators of national banks.

"(2) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator appointed under paragraph (1) and the wholesale financial institution for which such conservator has been appointed as the Comptroller of the Currency has under the Bank Conservation Act with respect to a conservator appointed under such Act and a national bank for which the conservator has been appointed.

"(f) EXCLUSIVE JURISDICTION.—Subsections (c) and (e) of section 43 of the Federal Deposit Insurance Act shall not apply to any wholesale financial institution.".

(c) VOLUNTARY TERMINATION OF INSURED STATUS BY CERTAIN INSTITUTIONS.—

(1) SECTION 8 DESIGNATIONS.—Section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (10) as paragraphs (1) through (9), respectively.

(2) VOLUNTARY TERMINATION OF INSURED STATUS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 8 the following new section:

"SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION.

"(a) IN GENERAL.—Except as provided in subsection (b), an insured State bank or a national bank may voluntarily terminate such bank's status as an insured depository institution in accordance with regulations of the Corporation if—

"(1) the bank provides written notice of the bank's intent to terminate such insured status—

"(A) to the Corporation and the Board of Governors of the Federal Reserve System not less than 6 months before the effective date of such termination; and

"(B) to all depositors at such bank, not less than 6 months before the effective date of the termination of such status; and

"(2) either—

"(A) the deposit insurance fund of which such bank is a member equals or exceeds the fund's designated reserve ratio as of the date the bank provides a written notice under paragraph (1) and the Corporation determines

that the fund will equal or exceed the applicable designated reserve ratio for the 2 semiannual assessment periods immediately following such date; or

"(B) the Corporation and the Board of Governors of the Federal Reserve System approved the termination of the bank's insured status and the bank pays an exit fee in accordance with subsection (e).

"(b) EXCEPTION.—Subsection (a) shall not apply with respect to—

"(1) an insured savings association; or

"(2) an insured branch that is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978.

"(c) ELIGIBILITY FOR INSURANCE TERMINATED.—Any bank that voluntarily elects to terminate the bank's insured status under subsection (a) shall not be eligible for insurance on any deposits or any assistance authorized under this Act after the period specified in subsection (f)(1).

"(d) INSTITUTION MUST BECOME WHOLESALE FINANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING ACTIVITIES.—Any depository institution which voluntarily terminates such institution's status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is a wholesale financial institution subject to section 9B of the Federal Reserve Act.

"(e) EXIT FEES.—

"(1) IN GENERAL.—Any bank that voluntarily terminates such bank's status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of the amount (if any) which would be required to restore the relevant deposit insurance fund to the fund's designated reserve ratio as of the date the bank provides a written notice under subsection (a)(1).

"(2) PROCEDURES.—The Corporation shall prescribe, by regulation, procedures for assessing any exit fee under this subsection.

"(f) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—

"(1) TRANSITION PERIOD.—The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the bank's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.

"(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank's depositors during such period, the Corporation shall have the same powers and rights with respect to such bank as in the case of an insured depository institution.

"(g) ADVERTISEMENTS.—

"(1) IN GENERAL.—A bank that voluntarily terminates the bank's insured status under this section shall not advertise or hold itself out as having insured deposits, except that the bank may advertise the temporary insurance of deposits under subsection (f) if, in connection with any such advertisement, the advertisement also states with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.

"(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank's insured status under this section shall be accompanied by a conspicuous, prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.

"(h) NOTICE REQUIREMENTS.—

"(1) NOTICE TO THE CORPORATION.—The notice required under subsection (a)(1)(A) shall be in such form as the Corporation may require.

"(2) NOTICE TO DEPOSITORS.—The notice required under subsection (a)(1)(B) shall be—

"(A) sent to each depositor's last address of record with the bank; and

"(B) in such manner and form as the Corporation finds to be necessary and appropriate for the protection of depositors.".

(3) DEFINITION.—Section 19(b)(1)(A)(i) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is amended by inserting ", or any wholesale financial institution subject to section 9B of this Act" after "such Act".

Subtitle E—Streamlining Antitrust Review of Bank Acquisitions and Mergers

SEC. 141. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

(a) AMENDMENTS TO SECTION 3 TO REQUIRE FILING OF APPLICATION COPIES WITH ANTITRUST AGENCIES.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended—

(1) in subsection (b) by inserting after paragraph (2) the following new paragraph:

"(3) REQUIREMENT TO FILE INFORMATION WITH ANTITRUST AGENCIES.—Any applicant seeking prior approval of the Board to engage in an acquisition transaction under this section must file simultaneously with the Attorney General and, if the transaction also involves an acquisition under section 4 or 6, the Federal Trade Commission copies of any documents regarding the proposed transaction required by the Board."; and

(2) in subsection (c)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(b) AMENDMENTS TO SECTION 11 TO MODIFY JUSTICE DEPARTMENT NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.—Section 11 of the Bank Holding Company Act of 1956 (12 U.S.C. 1849) is amended—

(1) in subsection (b)(1)—

(A) by striking ", if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors,";

(B) by striking "as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval." and inserting "as may be prescribed by the appropriate antitrust agency."; and

(C) by striking the 3d to last sentence and the penultimate sentence; and

(2) by striking subsections (c) and (e) and redesignating subsections (d) and (f) as subsections (c) and (d), respectively.

(c) DEFINITIONS.—Section 2(o) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)) is amended by adding at the end the following new paragraphs:

"(8) ANTITRUST AGENCIES.—The term 'antitrust agencies' means the Attorney General and the Federal Trade Commission.

"(9) APPROPRIATE ANTITRUST AGENCY.—With respect to a particular transaction, the term 'appropriate antitrust agency' means the antitrust agency engaged in reviewing the competitive effects of such transaction.".

SEC. 142. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT TO VEST IN THE ATTORNEY GENERAL SOLE RESPONSIBILITY FOR ANTITRUST REVIEW OF DEPOSITORY INSTITUTION MERGERS.

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—

(1) in paragraph (3)(C) by striking "during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection";

(2) by striking paragraph (4) and inserting the following new paragraph:

"(4) FACTORS TO BE CONSIDERED.—In determining whether to approve a transaction, the responsible agency shall in every case take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.";

(3) by striking paragraph (5) and inserting the following new paragraph:

"(5) NOTICE TO ATTORNEY GENERAL.—The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the responsible agency has found that it must act immediately in order to prevent the probable failure of one of the banks involved, the transaction may be consummated immediately upon approval by the agency. If the responsible agency has notified the other Federal banking agencies referred to in this section of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within 10 days, the transaction may not be consummated before

the 5th calendar day after the date of approval of the responsible agency. In all other cases, the transaction may not be consummated before the 30th calendar day after the date of approval by the agency, or such shorter period of time as may be prescribed by the Attorney General.";

(4) by striking paragraph (6) and redesignating paragraphs (7) through (11) as paragraphs (6) through (10), respectively;

(5) in subparagraph (A) of paragraph (6) (as so redesignated by paragraph (4) of this section)—

(A) by striking "(5)" and inserting "(4)"; and

(B) by striking "(6)" and inserting "(5)";

(C) by striking "In any such action, the court shall review de novo the issues presented.";

(6) in paragraph (6) (as so redesignated by paragraph (4) of this section)—

(A) by striking subparagraphs (B) and (D); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(7) in paragraph (8) (as so redesignated by paragraph (4) of this section)—

(A) by inserting "and" after the semicolon at the end of subparagraph (A):

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B); and

(8) by inserting after paragraph (10) (as so redesignated by paragraph (4) of this section) the following new paragraph:

"(11) REQUIREMENT TO FILE INFORMATION WITH ATTORNEY GENERAL.—Any applicant seeking prior written approval of the responsible Federal banking agency to engage in a merger transaction under this subsection shall file simultaneously with the Attorney General copies of any documents regarding the proposed transaction required by the Federal banking agency.".

SEC. 143. INFORMATION FILED BY DEPOSITORY INSTITUTIONS; INTERAGENCY DATA SHARING.

(a) FORMAT OF NOTICE.—

(1) IN GENERAL.—Notice of any proposed transaction for which approval is required under section 3 of the Bank Holding Company Act of 1956 or section 18(c) of the Federal Deposit Insurance Act shall be in a format designated and required by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) and shall contain a section on the likely competitive effects of the proposed transaction.

(2) DESIGNATION BY AGENCY.—The appropriate Federal banking agency, with the concurrence of the antitrust agencies, shall designate and require the form and content of the competitive effects section.

(3) NOTICE OF SUSPENSION.—Upon notification by the appropriate antitrust agency that the competitive effects section of an application is incomplete, the appropriate Federal banking agency shall notify the applicant that the agency will suspend processing of the application until the appropriate antitrust agency notifies the agency that the application is complete.

(4) EMERGENCY ACTION.—This provision shall not affect the appropriate Federal banking agency's authority to act immediately—

(A) to prevent the probable failure of 1 of the banks involved; or

(B) to reduce or eliminate a post approval waiting period in case of an emergency requiring expeditious action.

(5) EXEMPTION FOR CERTAIN FILINGS.—With the concurrence of the antitrust agencies, the appropriate Federal banking agency may exempt classes of persons, acquisitions, or transactions that are not likely to violate the antitrust laws from the requirement that applicants file a competitive effects section.

(b) INTERAGENCY DATA SHARING REQUIREMENT.—

(1) IN GENERAL.—To the extent not prohibited by other law, the Federal banking agencies shall make available to the antitrust agencies any data in their possession that the antitrust agencies deem necessary for antitrust reviews of transactions requiring approval under section 3 of the Bank Holding Company Act of 1956 or section 18(c) of the Federal Deposit Insurance Act.

(2) CONTINUATION OF DATA COLLECTION AND ANALYSIS.—The Federal banking agencies shall continue to provide market analysis, deposit share information, and other relevant information for determining market competition as needed by the Attorney General in the same manner such agencies provided analysis and information under section 18(c) of the Federal Deposit Insurance Act and 3(c) of the Bank Holding Company Act of 1956 (as such sections were in effect on the day before the date of the enactment of this Act) and shall continue to collect information necessary or useful for such analysis.

(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) ANTITRUST AGENCIES.—The term "antitrust agencies" means the Attorney General and the Federal Trade Commission.

(2) APPROPRIATE ANTITRUST AGENCY.—With respect to a particular transaction, the term "appropriate antitrust agency" means the antitrust agency engaged in reviewing the competitive effects of such transaction.

SEC. 144. APPLICABILITY OF ANTITRUST LAWS.

No provision of this subtitle shall be construed as affecting—

(1) the applicability of antitrust laws (as defined in section 11(d) of the Bank Holding Company Act of 1956; as so redesignated pursuant to this subtitle); or

(2) the applicability, if any, of any State law which is similar to the antitrust laws.

SEC. 145. CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES.

(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person which directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of the Federal Trade Commission Act or any other law enforced by the Federal Trade Commission.

(b) SAVINGS PROVISION.—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.

SEC. 146. EFFECTIVE DATE.

This subtitle shall take effect 6 months after the date of enactment of this Act.

Subtitle F—Applying the Principles of National Treatment and Equality of Competitive Opportunity to Foreign Banks and Foreign Financial Institutions

SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS THAT ARE FINANCIAL HOLDING COMPANIES.

Section 8(c) of the International Banking Act of 1978 (12 U.S.C. 3106(c)) is amended by adding at the end the following new paragraph:

"(3) TERMINATION OF GRANDFATHERED RIGHTS.—

"(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 6(b)(1)(D) or which receives a determination under section 10(e)(1) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.

"(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(e)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1997, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 5(h) of the Bank Holding Company Act of 1956.".

SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS.

Section 8A of the Federal Deposit Insurance Act (as added by section 136(c)(2) of this Act) is amended by adding at the end the following new subsection:

"(i) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.".

Subtitle G—Effective Date of Title

SEC. 171. EFFECTIVE DATE.

Except with regard to any subtitle or other provision of this title for which a specific effective date is provided, this title and the amendments made by this title shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

SEC. 201. DEFINITION OF BROKER.

Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

"(4) BROKER.—

"(A) IN GENERAL.—The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

"(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any of the following activities under the conditions described:

"(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

"(I) such broker or dealer is clearly identified as the person performing the brokerage services;

"(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

"(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

"(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement are in compliance with the Federal securities laws before distribution;

"(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the range of investment vehicles available from the bank and the broker or dealer under the contractual or other arrangement;

"(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed

dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

"(VII) such services are provided by the broker or dealer on a basis in which all customers which receive any services are fully disclosed to the broker or dealer;

"(VIII) the bank does not carry a securities account of the customer except in a customary custodian or trustee capacity; and

"(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

"(ii) TRUST ACTIVITIES.—The bank—

"(I) effects transactions in a trustee capacity and is primarily compensated based on a percentage of assets under management; or

"(II) is an insured bank and—

"(aa) effects transactions in a fiduciary capacity in its trust department in connection with the provision of investment advice or the exercise of investment discretion;

"(bb) is primarily compensated based on a percentage of assets under management, and does not receive incentive compensation for such brokerage activities;

"(cc) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities; and

"(dd) such services are not provided by an employee of the bank who is also an employee of a broker or dealer.

"(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

"(I) commercial paper, bankers acceptances, or commercial bills;

"(II) exempted securities, other than transactions in municipal revenue bonds that a national bank is not explicitly authorized to buy or sell for its own account by the Seventh paragraph of section 5136 of the Revised Statutes of the United States (as in effect on September 1, 1997) without percentage limitation on the amount of the investment for its own account;

"(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

"(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

"(iv) EMPLOYEE AND SHAREHOLDER BENEFIT PLANS.—The bank effects transactions in—

"(I) the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its subsidiaries, if the bank does not—

"(aa) solicit transactions; or

"(bb) receive any compensation directly or indirectly from employees for effecting such transactions, other than a flat per order processing fee that does not exceed the bank's incremental costs directly attributable to effecting such transactions; or

"(II) the securities of an issuer as part of that issuer's dividend reinvestment and stock purchase plan for its shareholders, if the bank does not—

"(aa) solicit transactions;

"(bb) receive any compensation directly or indirectly from shareholders for effecting such transactions, other than a flat per order processing fee that does not exceed the bank's incremental costs directly attributable to effecting such transactions; or

"(cc) net shareholders' buy and sell orders.

"(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of bank deposit funds into

any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

"(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—

"(I) a registered broker or dealer; or

"(II) an affiliate that is engaged in merchant banking, as described in section 17(i)(7)(B)(ii)(VIII) of this title.

"(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

"(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder;

"(II) at any time after one year after the date of enactment of the Financial Services Act of 1997, is not affiliated with a broker or dealer that has been registered for more than one year; and

"(III) effects transactions exclusively with qualified investors.

"(viii) SAFEKEEPING AND CUSTODY SERVICES.—The bank—

"(I) provides safekeeping or custody services with respect to securities that are pledged by one customer to another customer in connection with a repurchase agreement or similar financing arrangement;

"(II) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities; or

"(III) effects or facilitates the lending or borrowing of securities with or on behalf of its customers as part of services provided to those customers pursuant to subclause (I) or (II).

"(ix) BANKING PRODUCTS.—The bank effects transactions in banking products, as defined in paragraph (54) of this subsection.

"(x) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (ix), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

"(C) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that—

"(i) was, immediately prior to the enactment of the Financial Services Act of 1997, subject to section 15(e); and

"(ii) is subject to such restrictions and requirements as the Commission considers appropriate.".

SEC. 202. DEFINITION OF DEALER.

Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

"(5) DEALER.—

"(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.

"(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term 'dealer' does not include a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

"(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

"(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

"(I) commercial paper, bankers acceptances, or commercial bills;

"(II) exempted securities, other than purchases and sales of municipal revenue bonds that a national bank is not explicitly authorized to buy or sell for its own account by the Seventh paragraph of section 5136 of the Revised Statutes of the United States (as in effect on September 1, 1997) without percentage limitation on the amount of the investment for its own account;

"(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in con-

formity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

"(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

"(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

"(I) for the bank; or

"(II) for accounts for which the bank acts as a trustee or fiduciary.

"(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or otherwise, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations predominantly originated by the bank, or a syndicate of banks of which the bank is a member, or an affiliate of any such bank other than a broker or dealer.

"(iv) TRANSACTIONS IN BANKING PRODUCTS.—The bank buys or sells banking products, as defined in paragraph (54) of this subsection.

"(v) DERIVATIVE INSTRUMENTS.—The bank issues, buys, or sells any derivative instrument to which the bank is a party—

"(I) to or from a corporation, limited liability company, or partnership that owns and invests on a discretionary basis, not less than $10,000,000 in investments, or to or from a qualified investor, except that if the instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), the transaction shall be effected with or through a registered broker or dealer; or

"(II) to or from other persons, except that if the derivative instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), or is a security (other than a government security), the transaction shall be effected with or through a registered broker or dealer; or

"(III) to or from any person if the instrument is neither a security nor provides for the delivery of one or more securities (other than a derivative instrument).".

SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.

Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–3) is amended by inserting after subsection (i) the following new subsection:

"(j) REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding the date of enactment of this Act, engaged in effecting such sales.".

SEC. 204. GRIEVANCE PROCESS.

Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:

"(s) GRIEVANCE PROCESS WITH RESPECT TO SECURITIES ACTIVITIES.—

"(1) PROCEDURES REQUIRED.—The appropriate Federal banking agencies shall jointly establish procedures and facilities for receiving and expeditiously processing complaints against any bank or employee of a bank arising in connection with the purchase or sale of a security by a customer. The use of any such procedures and facilities by such a customer shall be at the election of the customer.

"(2) REQUIRED ACTIONS.—The actions required by the Federal banking agencies under paragraph (1) shall include the following:

"(A) establishing a group, unit, or bureau within each such agency to receive such complaints;

"(B) developing and establishing procedures for investigating such complaints;

"(C) developing and establishing procedures for informing customers of the rights they may have in connection with such complaints; and

"(D) developing and establishing procedures for resolving such complaints, including procedures for the recovery of losses to the extent appropriate.

"(3) PROCEDURES IN ADDITION TO OTHER REMEDIES.—The procedures and remedies provided under this subsection shall be in addition to, and not in lieu of, any other remedies available under law.

"(4) DEFINITION.—As used in this subsection, the term 'security' has the meaning provided in section 3(a)(10) of the Securities Exchange Act of 1934.".

SEC. 205. INFORMATION SHARING.

Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:

"(t) RECORDKEEPING REQUIREMENTS.—

"(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.

"(2) DEFINITIONS.—As used in this subsection the term 'Commission' means the Securities and Exchange Commission.".

SEC. 206. BANKING PRODUCTS, DERIVATIVE INSTRUMENT, AND QUALIFIED INVESTOR DEFINED.

Section 3(a) of the Securities Exchange Act of 1934 is amended by adding at the end the following new paragraphs:

"(54) BANKING PRODUCT.—

"(A) DEFINITION.—The term 'banking product' means—

"(i) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

"(ii) a banker's acceptance;

"(iii) a letter of credit issued or loan made by a bank;

"(iv) a debit account at a bank arising from a credit card or similar arrangement;

"(v) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

"(I) to qualified investors; or

"(II) by an employee of a bank who is not also an employee of a broker or dealer to other persons that—

"(aa) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

"(bb) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available; or

"(vi) any derivative instrument, whether or not individually negotiated, involving or relating to foreign currencies, except options on foreign currencies that trade on a national securities exchange.

"(B) CLASSIFICATION LIMITED.—Classification of a particular product as a banking product pursuant to this paragraph shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

"(55) DERIVATIVE INSTRUMENT.—

"(A) DEFINITION.—The term 'derivative instrument' means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include a banking product.

"(B) CLASSIFICATION LIMITED.— Classification of a particular contract as a derivative instrument pursuant to this paragraph shall not be construed as finding or implying that such instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

"(56) QUALIFIED INVESTOR.—

"(A) DEFINITION.—The term 'qualified investor' means—

"(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

"(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

"(iii) any bank (as defined in paragraph (6) of this subsection), savings and loan association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

"(iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;

"(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

"(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

"(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

"(viii) any associated person of a broker or dealer other than a natural person; or

"(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978).

"(B) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a 'qualified investor' as any other person, other than a natural person, taking into consideration such factors as the person's financial sophistication, net worth, and knowledge and experience in financial matters.".

SEC. 207. GOVERNMENT SECURITIES DEFINED.

Section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)) is amended—

(1) by striking "or" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(E) for purposes of section 15C as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes.".

SEC. 208. EFFECTIVE DATE.

This subtitle shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

Subtitle B—Bank Investment Company Activities

SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.

(a) MANAGEMENT COMPANIES.—Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(f)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by striking "(f) Every registered" and inserting the following:

"(f) CUSTODY OF SECURITIES.—

"(1) Every registered";

(3) by redesignating the 2d, 3d, 4th, and 5th sentences of such subsection as paragraphs (2) through (5), respectively, and indenting the left margin of such paragraphs appropriately; and

(4) by adding at the end the following new paragraph:

"(6) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person,

promoter, organizer, or sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.".

(b) UNIT INVESTMENT TRUSTS.—Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a–26) is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following new subsection:

"(b) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).".

(c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) in paragraph (1), by striking "or" at the end;

(2) in paragraph (2), by striking the period at the end and inserting "; or"; and

(3) by inserting after paragraph (2) the following:

"(3) as custodian.".

SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COMPANY.

Section 17(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(a)) is amended—

(1) by striking "or" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.".

SEC. 213. INDEPENDENT DIRECTORS.

(a) IN GENERAL.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) by striking clause (v) and inserting the following new clause:

"(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

"(I) the investment company,

"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

"(III) any account over which the investment company's investment adviser has brokerage placement discretion,";

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

"(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

"(I) the investment company,

"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

"(III) any account for which the investment company's investment adviser has borrowing authority,".

(b) CONFORMING AMENDMENT.—Section 2(a)(19)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(B)) is amended—

(1) by striking clause (v) and inserting the following new clause:

"(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or

affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

"(I) any investment company for which the investment adviser or principal underwriter serves as such,

"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such, or

"(III) any account over which the investment adviser has brokerage placement discretion,";

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

"(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

"(I) any investment company for which the investment adviser or principal underwriter serves as such,

"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such, or

"(III) any account for which the investment adviser has borrowing authority,".

(c) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by striking "bank, except" and inserting "bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), except".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 1-year period beginning on the date of enactment of this subtitle.

SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.

Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(a)) is amended to read as follows:

"(a) MISREPRESENTATION OF GUARANTEES.—

"(1) IN GENERAL.—It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

"(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

"(B) has been insured by the Federal Deposit Insurance Corporation; or

"(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

"(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

"(3) DEFINITIONS.—The terms 'insured depository institution' and 'appropriate Federal banking agency' have the meaning given to such terms in section 3 of the Federal Deposit Insurance Act.".

SEC. 215. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(6)) is amended to read as follows:

"(6) The term 'broker' has the same meaning as in the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.".

SEC. 216. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as follows:

"(11) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

(a) INVESTMENT ADVISER.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended in subparagraph (A), by striking "investment company" and inserting "investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser".

(b) SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following:

"(26) The term 'separately identifiable department or division' of a bank means a unit—

"(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

"(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.".

SEC. 218. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as follows:

"(3) The term 'broker' has the same meaning as in the Securities Exchange Act of 1934.".

SEC. 219. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as follows:

"(7) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

SEC. 220. INTERAGENCY CONSULTATION.

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting after section 210 the following new section:

"SEC. 210A. CONSULTATION.

"(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

"(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access with respect to the investment advisory activities—

"(A) of any—

"(i) bank holding company,

"(ii) bank, or

"(iii) separately identifiable department or division of a bank,

that is registered under section 203 of this title; and

"(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, of such bank or bank holding company.

"(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, any of which is registered under section 203 of this title.

"(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.

"(c) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' shall have the same meaning as in section 3 of the Federal Deposit Insurance Act.".

SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.

(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking "or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian" and inserting "or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:

"(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940;".

(c) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(3)) is amended by inserting before the period the following: ", if—

"(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

"(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

"(i) advertised; or

"(ii) offered for sale to the general public; and

"(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law".

SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.

Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is amended by adding at the end the following new subsection:

"(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

"(1) IN GENERAL.—If an investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—

"(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

"(B) if it holds the shares in a trustee or fiduciary capacity with respect to any person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—

"(i) transfer the power to vote the shares of the investment company through to—

"(I) the beneficial owners of the shares;

"(II) another person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or

"(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

"(ii) vote the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or

"(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.

"(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affiliated person of that investment

adviser, that holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets held in such capacities.

"(3) SAFE HARBOR.—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).".

SEC. 223. CONFORMING CHANGE IN DEFINITION.

Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking "(A) a banking institution organized under the laws of the United States" and inserting "(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)".

SEC. 224. CONFORMING AMENDMENT.

Section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended by adding at the end the following new subsection:

"(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.".

SEC. 225. EFFECTIVE DATE.

This subtitle shall take effect 90 days after the date of the enactment of this Act.

Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES BY THE SECURITIES AND EXCHANGE COMMISSION.

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by redesignating subsection (i) as subsection (l); and

(2) by inserting after subsection (h) the following new subsections:

"(i) INVESTMENT BANK HOLDING COMPANIES.—

"(1) MANDATORY SUPERVISION OF ANY INVESTMENT BANK HOLDING COMPANY SUBSTANTIALLY ENGAGED IN THE SECURITIES BUSINESS, HAVING AN AFFILIATE THAT IS A WHOLESALE FINANCIAL INSTITUTION.—

"(A) MANDATORY SUPERVISION.—An investment bank holding company that—

"(i) is substantially engaged in the securities business;

"(ii) controls one or more wholesale financial institutions that, in the aggregate, have—

"(I) consolidated risk-weighted assets that are less than $15,000,000,000; and

"(II) annual gross revenues that represent less than 25 percent of the consolidated annual gross revenues of the company;

"(iii) does not control—

"(I) a bank other than a wholesale financial institution;

"(II) an insured bank other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956; or

"(III) a savings association;

"(iv) is not a foreign bank; and

"(v) has not elected to be supervised by the Board of Governors of the Federal Reserve System,

shall be regulated by the Commission as a supervised investment bank holding company in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

"(B) METHOD OF CALCULATION.—

"(i) RISK-WEIGHTED ASSETS.—For purposes of subparagraph (A)(ii)(I), the consolidated risk-weighted assets of a wholesale financial institution shall—

"(I) be based on the average consolidated risk-weighted assets of the institution for the four previous calendar quarters; and

"(II) include risk-weighted claims on affiliates only to the extent such claims, in the aggregate, exceed the aggregate risk-weighted claims of affiliates on the wholesale financial institution.

For purposes of this clause, the term 'affiliates' shall not include any subsidiary of the wholesale financial institution.

"(ii) INDEXED GROWTH.—The dollar amount contained in subparagraph (A)(ii)(I) shall be adjusted annually after December 31, 1998, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

"(2) ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

"(A) IN GENERAL.—An investment bank holding company that is not—

"(i) an affiliate of a wholesale financial institution, an insured bank (other than an institution described in paragraph (1)(A)(iii)(II)), or a savings association,

"(ii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978, or

"(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act,

may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

"(B) NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after receipt of such written notice by the Commission or within such shorter time period as the Commission, by rule or order, may determine.

"(3) WITHDRAWAL FROM SUPERVISION BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY FOR COMPANIES THAT MUST CONTINUE TO BE SUPERVISED.—

"(A) MANDATORY WITHDRAWAL.—A supervised investment bank holding company that owns or controls one or more wholesale financial institutions, and ceases to meet any requirements of paragraph (1), shall—

"(i) file a written notice of withdrawal from Commission supervision upon such terms and conditions as the Commission, after consultation with the Board of Governors of the Federal Reserve System, deems necessary or appropriate;

"(ii) provide a copy of such notice to the Board of Governors of the Federal Reserve System; and

"(iii) be supervised by the Board of Governors of the Federal Reserve System under applicable provisions of the Bank Holding Company Act of 1956.

"(B) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company described in paragraph (1)(A), upon such terms and conditions as the Commission deems necessary or appropriate after consultation with the Board of Governors of the Federal Reserve System, may elect not to be supervised by the Commission by filing with the Commission a written notice of withdrawal from Commission supervision, and shall provide a copy of such notice to the Board of Governors of the Federal Reserve System.

"(C) EFFECTIVE DATE OF WITHDRAWAL.—A written notice of withdrawal from Commission supervision pursuant to this paragraph shall become effective 45 days after receipt by the Commission or such shorter or longer

period as the Commission, by order, deems necessary or appropriate to prevent evasion of the purposes of this section.

"(D) REQUIRED PROCEDURES.—The Commission, after consultation with the Board of Governors of the Federal Reserve System, shall, by rule, establish standards and procedures to require or permit, as appropriate, supervised investment bank holding companies described in paragraph (1)(A) to withdraw from Commission supervision pursuant to this paragraph.

"(4) ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY FOR COMPANIES THAT ARE VOLUNTARILY REGULATED.—

"(A) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company that is supervised pursuant to paragraph (2) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until one year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.

"(B) DISCONTINUATION OF COMMISSION SUPERVISION FOR COMPANIES THAT ARE VOLUNTARILY REGULATED.—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (2) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.

"(5) SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.—

"(A) RECORDKEEPING AND REPORTING.—

"(i) IN GENERAL.—Every supervised investment bank holding company and each affiliate thereof shall make and keep for prescribed periods such records, furnish copies thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—

"(I) the company's or affiliate's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker, dealer, or wholesale financial institution affiliate of the supervised investment bank holding company; and

"(II) the extent to which the company or affiliate has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

"(ii) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—

"(I) a balance sheet and income statement;

"(II) an assessment of the consolidated capital of the supervised investment bank holding company;

"(III) an independent auditor's report attesting to the supervised investment bank holding company's compliance with its internal risk management and internal control objectives; and

"(IV) reports concerning the extent to which the company or affiliate has complied with the provisions of this title and any regulations prescribed and orders issued under this title.

"(B) USE OF EXISTING REPORTS.—

"(i) IN GENERAL.—The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

"(ii) AVAILABILITY.—A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).

"(C) EXAMINATION AUTHORITY.—

"(i) FOCUS OF EXAMINATION AUTHORITY.—The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—

"(I) inform the Commission regarding—

"(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;

"(bb) the financial and operational risks within the supervised investment bank holding company that may affect any broker, dealer, or wholesale financial institution controlled by such supervised investment bank holding company; and

"(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and

"(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer or wholesale financial institution affiliated with the supervised investment bank holding company and any of the company's other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the 'Bank Secrecy Act') and regulations thereunder.

"(ii) RESTRICTED FOCUS OF EXAMINATIONS.—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—

"(I) the company;

"(II) any affiliate of the company (other than a wholesale financial institution) that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker, dealer, or wholesale financial institution, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer or any affiliated wholesale financial institution; and

"(III) any wholesale financial institution affiliate of an investment bank holding company, for the purpose of monitoring and enforcing compliance by such a wholesale financial institution or any of its affiliates with the Federal securities laws.

"(iii) NOTICE.—To the fullest extent possible, the Commission shall notify the appropriate regulatory agency prior to conducting an examination of a wholesale financial institution.

"(iv) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of a wholesale financial institution or an institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.

"(D) INFORMATION SHARING.—The Commission shall, upon request, provide to the appropriate regulatory agency such reports, records, or other information as the Commission has available concerning any supervised investment bank holding company described in paragraph (1) or any of its affiliates to assist the appropriate regulatory agency in carrying out its responsibilities under the Federal banking laws.

"(6) HOLDING COMPANY CAPITAL.—

"(A) AUTHORITY.—If the Commission finds that it is necessary to adequately supervise investment bank holding companies and their broker, dealer, or wholesale financial institution affiliates consistent with the purposes of this subsection, the Commission may adopt capital adequacy rules for supervised investment bank holding companies.

"(B) METHOD OF CALCULATION.—In developing rules under this paragraph:

"(i) DOUBLE LEVERAGE.—The Commission shall consider the use by the supervised investment bank holding company of debt and other liabilities to fund capital investments in affiliates.

"(ii) NO UNWEIGHTED CAPITAL RATIO.—The Commission shall not impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

"(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Commission shall not, by rule, regulation, guideline, order or otherwise, impose any capital adequacy provision on a nonbanking affiliate (other than a broker or dealer) that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority.

"(iv) APPROPRIATE EXCLUSIONS.—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.

"(C) INTERNAL RISK MANAGEMENT MODELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

"(D) CONSULTATION WITH THE BOARD.—The Commission shall consult with the Board of Governors of the Federal Reserve System in developing capital adequacy requirements for investment bank holding companies described in paragraph (1).

"(7) ACTIVITIES AND INVESTMENTS.—

"(A) IN GENERAL.—Supervised investment bank holding companies described in paragraph (1) may acquire and own the shares of a wholesale financial institution in accordance with section 3 of the Bank Holding Company Act of 1956 and of any institution described in subparagraph (D), (F), and (G) of section 2(c)(2) of such Act. Such companies may also engage in activities, and may acquire or retain ownership or control of shares of any company engaged in any activities, to the extent authorized by subparagraphs (B), (C), (D), (E), and (G). Such investment bank holding companies may not otherwise engage directly or indirectly in activities or acquire and retain ownership or control of the shares of companies.

"(B) PERMISSIBLE FINANCIAL ACTIVITIES AND INVESTMENTS.—

"(i) IN GENERAL.—A supervised investment bank holding company described in paragraph (1) may engage in any activity, and may directly or indirectly acquire and retain ownership and control of shares of any company engaged in any activity—

"(I) that is permissible for a bank holding company under section 4(c)(1) through (14) of the Bank Holding Company Act of 1956; or

"(II) that are financial in nature or incidental to such financial activities, as determined under clause (ii), or that the Commission determines by rule, regulation, or order pursuant to clause (iii) to be financial in nature or incidental to such financial activities.

"(ii) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:

"(I) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

"(II) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.

"(III) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

"(IV) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

"(V) Underwriting, dealing in, or making a market in securities.

"(VI) Engaging in any activity that the Board of Governors of the Federal Reserve System has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1997, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

"(VII) Engaging, in the United States, in any activity that—

"(aa) a bank holding company may engage in outside the United States; and

"(bb) the Board of Governors of the Federal Reserve System has determined, under regulations issued pursuant to section 4(c)(13) of Bank Holding Company Act (as in effect on the day before the date of enactment of the Financial Services Act of 1997) to be usual in connection with the transaction of banking or other financial operations abroad.

"(VIII) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the investment bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

"(aa) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

"(bb) such shares, assets, or ownership interests are acquired and held by a securities affiliate or an affiliate thereof as part of a bona fide underwriting or merchant banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

"(cc) such shares, assets, or ownership interests, are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in division (bb); and

"(dd) during the period such shares, assets, or ownership interests are held, the investment bank holding company does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of division (bb).

"(IX) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the investment bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

"(aa) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

"(bb) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance);

"(cc) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

"(dd) during the period such shares, assets, or ownership interests are held, the investment bank holding company does not directly or indirectly participate in the day-to-day management or operation of the company or entity except insofar as necessary to achieve the objectives of divisions (bb) and (cc).

"(iii) ACTIONS REQUIRED.—The Commission shall, by regulation or order, define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

"(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

"(B) Providing any device or other instrumentality for transferring money or other financial assets;

"(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

"(iv) CONSISTENCY OF INTERPRETATION.—The Commission shall consult with the Board of Governors of the Federal Reserve System concerning the exercise of its authority and responsibility under this subparagraph with respect to investment bank holding companies to as-

sure, to the fullest extent possible, the consistency of interpretation and the maintenance of competitive equality.

"(C) PERMISSIBLE NONFINANCIAL ACTIVITIES AND INVESTMENTS.—

"(i) IN GENERAL.—A supervised investment bank holding company described in paragraph (1) may engage in any activity not permitted under subparagraph (B) (hereinafter in this subparagraph and subparagraph (D) referred to as 'nonfinancial activities'), and acquire and retain ownership and control of shares of any company engaged in any such nonfinancial activity, if—

"(I) the aggregate annual gross revenues derived from all such activities and of all such companies does not exceed 5 percent of the consolidated annual gross revenues of the supervised investment bank holding company;

"(II) the consolidated total assets of any company the shares of which are acquired by such investment bank holding company pursuant to this subparagraph are less than $750,000,000 at the time such shares are acquired; and

"(III) such company provides notice to the Commission within 30 days of commencing the activity or acquiring the ownership or control.

"(ii) INCLUSION OF GRANDFATHERED ACTIVITIES.—For purposes of determining compliance with the limits contained in clause (i) of this subparagraph, the gross revenues derived from all activities conducted, and companies the shares of which are held, under subparagraph (D) shall be considered to be derived or held under this subparagraph.

"(D) GRANDFATHERED ACTIVITIES.—

"(i) IN GENERAL.—Notwithstanding subparagraph (C)(i), a company that becomes a supervised investment bank holding company described in paragraph (1) may continue to engage, directly or indirectly, in any nonfinancial activity and may retain ownership and control of shares of a company engaged in any nonfinancial activity, if—

"(I) on the date of enactment of the Financial Services Act of 1997, such investment bank holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and

"(II) the company engaged in such nonfinancial activity continues to engage only in the same activities that such company conducted on the date of enactment of the Financial Services Act of 1997, and other activities permissible under this subsection.

"(ii) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—An investment bank holding company described in paragraph (1) that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of such investment bank holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Commission has not determined to be financial in nature or incidental to activities that are financial in nature under subparagraph (B).

"(iii) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) or (g) of section 6 of the Bank Holding Company Act of 1956 may engage in any activity or own any shares pursuant to this subparagraph or subparagraph (C).

"(E) COMMODITIES.—

"(i) IN GENERAL.—An investment bank holding company which was predominately engaged as of January 1, 1997, in securities activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1997, if such investment bank holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1997, in the United States.

"(ii) LIMITATION.—Notwithstanding subparagraph (C)(i)(I), the attributed aggregate investment by an investment bank holding company in

activities permitted under this subparagraph and not otherwise permitted for all investment bank holding companies under this subsection may not exceed 5 percent of the capital of the investment bank holding company, except that the Commission may increase such percentage of capital by such amounts and under such circumstances as the Commission considers appropriate, consistent with the purposes of this Act.

"(iii) ATTRIBUTED INVESTMENT AMOUNT.—For purposes of clause (ii), the amount of the investment by an investment bank holding company which are attributable to activities described in such clause shall be determined pursuant to regulations issued by the Commission which attribute capital on the basis of such activities in relation to all activities of the company.

"(F) CROSS MARKETING RESTRICTIONS.—A supervised investment bank holding company described in paragraph (1) shall not permit—

"(i) any company whose shares it owns or controls pursuant to subparagraph (C) or (D), to offer or market any product or service of an affiliated wholesale financial institution; or

"(ii) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such investment bank holding company pursuant to such subparagraphs.

"(G) DEVELOPING ACTIVITIES.—An investment bank holding company described in paragraph (1) may engage, or directly or indirectly acquire shares of any company engaged, in any activity that the Commission has not determined to be financial in nature or incidental to financial activities under subparagraph (B) if—

"(i) the holding company reasonably concludes that the activity is financial in nature or incidental to financial activities;

"(ii) the gross revenues from all activities conducted under this subparagraph represent less than 5 percent of the consolidated gross revenues of the holding company;

"(iii) the aggregate total assets of all companies the shares of which are held under this subparagraph do not exceed 5 percent of the holding company's consolidated total assets;

"(iv) the total capital invested in activities conducted under this subparagraph represents less than 5 percent of the consolidated total capital of the holding company;

"(v) the Commission has not previously determined that the activity is not financial in nature or incidental to financial activities under subparagraph (B); and

"(vi) the holding company provides written notification to the Commission describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.

"(8) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—

"(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, wholesale financial institutions, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2) of the Bank Holding Company Act of 1956; and

"(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

"(9) REFERENCE TO BOARD BACKUP EXAMINATION AND ENFORCEMENT AUTHORITY.—The Board of Governors of the Federal Reserve System has backup authority, pursuant to section 10(e) of the Bank Holding Company Act of 1956, with respect to supervised investment bank holding companies described in paragraph (1).

"(10) DEFINITIONS.—For purposes of this subsection and subsection (j)—

"(A) The term 'investment bank holding company' means—

"(i) any person other than a natural person that owns or controls one or more brokers or dealers; and

"(ii) the associated persons of the investment bank holding company.

"(B) The term 'supervised investment bank holding company' means any investment bank holding company that is supervised by the Commission pursuant to paragraph (1) or (2) of this section.

"(C) Any investment bank holding company is 'substantially engaged in the securities business' if—

"(i) the annual total consolidated net revenues derived by the holding company from effecting transactions in or buying and selling securities as a broker or dealer represent at least 35 percent of the annual total consolidated net revenues of the company; or

"(ii) the company controls one or more brokers or dealers that in the aggregate have total equity capital and qualifying subordinated debt (based on an average of the four preceding calendar quarters) in excess of $750,000,000 and such total equity capital and qualifying subordinated debt does not fall below $500,000,000 (based on an average for the four preceding calendar quarters).

"(D) The term 'wholesale financial institution' means a wholesale financial institution subject to section 9B of the Federal Reserve Act.

"(E) The terms 'affiliate,' 'bank,' 'bank holding company,' 'company,' 'control,' 'savings association,' 'well capitalized,' and 'well managed' have the meanings given to those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

"(F) The term 'insured bank' has the meaning given to that term in section 3 of the Federal Deposit Insurance Act.

"(G) The term 'foreign bank' has the meaning given to that term in section 1(b)(7) of the International Banking Act of 1978.

"(H) The terms "person associated with an investment bank holding company' and "associated person of an investment bank holding company' means any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.

"(j) COMMISSION BACKUP AUTHORITY.—

"(1) INSPECTION AUTHORITY FOR INVESTMENT BANK HOLDING COMPANIES THAT ARE NOT SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—

"(A) AUTHORITY.—The Commission may make inspections of any investment bank holding company that—

"(i) controls a wholesale financial institution,

"(ii) is not a foreign bank, and

"(iii) does not control an insured bank (other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956) or a savings association,

and any affiliate of such company, for the purpose of monitoring and enforcing compliance by the investment bank holding company with the Federal securities laws.

"(B) LIMITATION.—The Commission shall limit the focus and scope of any inspection under subparagraph (A) to those transactions, policies, procedures, or records that are reasonably necessary to monitor and enforce compliance by the investment bank holding company or any affiliate with the Federal securities laws.

"(C) DEFERENCE TO EXAMINATIONS.—To the fullest extent possible, the Commission shall use, for the purposes of this subsection, the reports of examinations—

"(i) made by the Board of Governors of the Federal Reserve System of any investment bank holding company that is supervised by the Board;

"(ii) made by or on behalf of any State regulatory agency responsible for the supervision of an insurance company of any licensed insurance company; and

"(iii) made by any Federal or State banking agency of any bank or institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956.

"(D) NOTICE.—To the fullest extent possible, the Commission shall notify the appropriate regulatory agency prior to conducting an inspection of a wholesale financial institution or institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956.

"(k) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h), (i), or (j), or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker

or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of paragraph (5) of subsection (i), and subsection (j) as confidential information for purposes of section 24(b)(2) of this title.".

(b) CONFORMING AMENDMENTS.—

(1) Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by adding at the end the following new subparagraphs:

"(H) When used with respect to a wholesale financial institution—

"(i) the Board of Governors of the Federal Reserve System, in the case of a wholesale financial institution that has a national bank charter, a State bank charter, or is operating under the Code of Law for the District of Columbia; and

"(ii) the Comptroller of the Currency, in the case of a wholesale financial institution that has a national bank charter or is operating under the Code of Law for the District of Columbia.

"(I) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956—

"(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;

"(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

"(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

"(iv) the Commission in the case of all other such institutions.".

(2) Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(b)(6)(A)) is amended by inserting after "With respect to any person who is associated," the following: "including an investment bank holding company, a wholesale financial institution, or institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956,".

(3) Section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) is amended by inserting after "under common control with such broker or dealer" the following: "(including an investment bank holding company, wholesale financial institution, or institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956 that is affiliated with an investment bank holding company)".

(4) Section 3(a)(21) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(21)) is amended by inserting after "under common control with such member" the following: "(including an investment bank holding company, wholesale financial institution or institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956 that is affiliated with an investment bank holding company)".

(5) Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended—

(A) by striking "this title" and inserting "law"; and

(B) by inserting ", examination reports" after "financial records".

Subtitle D—Study

SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND CONSUMERS OF UNINSURED PRODUCTS.

Within one year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the efficacy, costs, and benefits of requiring that any depository institution that accepts federally

insured deposits and that, directly or through a contractual or other arrangement with a broker, dealer, or agent, buys from, sells to, or effects transactions for retail investors in securities or consumers of insurance to inform such investors and consumers through the use of a logo or seal that the security or insurance is not insured by the Federal Deposit Insurance Corporation.

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

SEC. 301. STATE REGULATION OF THE BUSINESS OF INSURANCE.

The Act entitled "An Act to express the intent of the Congress with reference to the regulation of the business of insurance" and approved March 9, 1945 (15 U.S.C. 1011 et seq.), commonly referred to as the "McCarran-Ferguson Act") remains the law of the United States.

SEC. 302. MANDATORY INSURANCE LICENSING REQUIREMENTS.

No person or entity shall provide insurance in a State as principal or agent unless such person or entity is licensed by the appropriate insurance regulator of such State.

SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.

The insurance sales activity of any person or entity shall be functionally regulated.

SEC. 304. INSURANCE UNDERWRITING IN NATIONAL BANKS.

(a) IN GENERAL.—Except as provided in section 306, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) AUTHORIZED PRODUCTS.—For the purposes of this section, a product is authorized if—

(1) as of January 1, 1997, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(c) DEFINITION.—For purposes of this section, the term "insurance" means—

(1) any product regulated as insurance as of January 1, 1997, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1997, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is (i) a deposit product, (ii) a loan, discount, letter of credit, or other extension of credit, (iii) a trust or other fiduciary service, (iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act), or (v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986, as amended; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial

guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, as amended, if the bank were subject to tax as an insurance company under section 831 of such Code; or

(3) any annuity contract the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986, as amended.

SEC. 305. NEW BANK AGENCY ACTIVITIES ONLY THROUGH ACQUISITION OF EXISTING LICENSED AGENTS.

If a national bank or a subsidiary of a national bank is not providing insurance as agent in a State as of the date of the enactment of this Act, the national bank and the subsidiary of the national bank may provide insurance (which such bank or subsidiary is otherwise authorized to provide) as agent in such State after such date only by acquiring a company which has been licensed by the appropriate State regulator to provide insurance as agent in such State for not less than 2 years before such acquisition.

SEC. 306. TITLE INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES.

(a) AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or any other law, no national bank, and no subsidiary of a national bank, may engage in any activity involving the underwriting or sale of title insurance other than title insurance activities in which such national bank or subsidiary was actively and lawfully engaged before the date of the enactment of this Act.

(2) INSURANCE AFFILIATE.—In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in any activity involving the underwriting or sale of title insurance pursuant to paragraph (1).

(3) INSURANCE SUBSIDIARY.—In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate which provides insurance as principal and is not a subsidiary, the national bank may not engage in any activity involving the underwriting or sale of title insurance pursuant to paragraph (1).

(4) AFFILIATE AND SUBSIDIARY DEFINED.—For purposes of this section, the terms "affiliate" and "subsidiary" have the meaning given such terms in section 2 of the Bank Holding Company Act of 1956.

(b) PARITY EXCEPTION.—Notwithstanding subsection (a), in the case of any State in which banks organized under the laws of such State were authorized to sell title insurance as agent as of January 1, 1997, a national bank and a subsidiary of a national bank may sell title insurance as agent in such State in the same manner and to the same extent such State banks are authorized to sell title insurance as agent in such State.

SEC. 307. EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FINANCIAL REGULATORS.

(a) IN GENERAL.—

(1) FILING.—In the case of a regulatory conflict between a State insurance regulator and a Federal financial regulator as to whether any product is or is not insurance or whether a State law regulating an insurance activity is properly treated as preempted under Federal law, any State insurance regulator or any Federal financial regulator may seek an expedited judicial determination of such conflict including the appropriate classification or definition of a new product, or regulation of an insurance activity, by filing an action in—

(A) any United States district court in which such action may be brought under chapter 87 of title 28, United States Code; or

(B) the United States District Court for the District of Columbia.

(2) EXPEDITED REVIEW.—The United States district court in which an action described in paragraph (1) is filed shall complete all action on such case, including rendering a judgment, before the end of the 90-day period beginning on the date such action is filed, unless all parties to such action agree to any extension of such period.

(3) SAVINGS PROVISION.—This section shall not apply with respect to any determination as to whether any product is or is not a security for purposes of the securities laws (as such term is defined in section 3(a) of the Securities Exchange Act of 1934).

(b) APPEAL.—

(1) IN GENERAL.—Any petition for review by any party to an action described in subsection (a)(1) of any final judgment of a United States district court with

respect to such action shall be filed by such party before the end of the 10-day period beginning on the date such judgment is issued by the district court in—

(A) the United States court of appeals for the circuit in which such United States district court is located; or

(B) the United States Court of Appeals for the District of Columbia.

(2) EXPEDITED REVIEW.—The United States court of appeals in which a petition for review is filed in accordance with paragraph (1) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) SUPREME COURT REVIEW.—Any request for certiori to the Supreme Court of the United States of any judgment of a United States court of appeals with respect to a petition for review in accordance with subsection (b) shall be filed with the United States Supreme Court as soon as practicable after such judgment is issued.

(d) STATUTE OF LIMITATION.—No action may be filed under this section challenging an order, ruling, determination, or other action of a Federal financial regulator or State insurance regulator after the later of—

(1) the end of the 12-month period beginning on the date the first public notice is made of such order, ruling, or determination in its final form; or

(2) the end of the 6-month period beginning on the date such order, ruling, or determination takes effect.

(e) STANDARD OF REVIEW.—The court shall decide an action filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

(f) INJUNCTIONS.—The court may issue an injunction against a financial regulator or any person to which an action filed under this section relates.

(g) FEDERAL FINANCIAL REGULATOR DEFINED.—For purposes of this section, the term "Federal financial regulator" means—

(1) any Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act); and

(2) the Securities and Exchange Commission only with respect to the responsibilities of the Commission under section 17(i) of the Securities Exchange Act of 1934.

SEC. 308. CONSUMER PROTECTION REGULATIONS.

(a) REGULATIONS REQUIRED.—

(1) IN GENERAL.—Each Federal banking agency shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of the enactment of this Act, consumer protection regulations which—

(A) apply to retail sales, solicitations, advertising, or offers of any insurance product by any insured depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution; and

(B) meet the requirements of this section and provide such additional protections for consumers to whom such sales, solicitations, advertising, or offers are directed as the agency determines to be appropriate.

(2) APPLICABILITY TO SUBSIDIARIES.—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiaries of an insured depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is necessary to ensure the consumer protections provided by this section.

(3) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

(b) SALES PRACTICES.—The regulations prescribed pursuant to subsection (a) shall include anticoercion rules applicable to the sale of insurance products which prohibit an insured depository institution from engaging in any practice that would lead a consumer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

(1) the purchase of an insurance product from the institution or any of its affiliates or subsidiaries; or

(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(c) DISCLOSURES AND ADVERTISING.—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

(1) DISCLOSURES.—

(A) IN GENERAL.—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iv), at the time of application for an extension of credit:

(i) UNINSURED STATUS.—As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the insured depository institution.

(ii) INVESTMENT RISK.—In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

(iv) COERCION.—The approval of an extension of credit may not be conditioned on—

(I) the purchase of an insurance product from the institution in which the application for credit is pending or any of its affiliates or subsidiaries; or

(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(B) MAKING DISCLOSURE READILY UNDERSTANDABLE.—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

(i) "NOT FDIC-INSURED".

(ii) "NOT GUARANTEED BY THE BANK".

(iii) "MAY GO DOWN IN VALUE".

(C) ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.—In prescribing the requirements under subparagraphs (A) and (D), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgements.

(D) CONSUMER ACKNOWLEDGEMENT.—A requirement that an insured depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgement by such consumer of the receipt of the disclosure required under this subsection with respect to such product.

(2) PROHIBITION ON MISREPRESENTATIONS.—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the insured depository institution, or any subsidiary as appropriate, which could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution; or

(B) in the case of a variable annuity or other insurance product that involves an investment risk, the investment risk associated with any such product.

(d) SEPARATION OF BANKING AND NONBANKING ACTIVITIES.—

(1) REGULATIONS REQUIRED.—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits and the making of loans is kept, to the extent practicable, physically segregated from insurance product activity.

(2) REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

(A) SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted or loans are made.

(B) REFERRALS.—Standards which permit any person accepting deposits from, or making loans to, the public in an area where such transactions are routinely conducted in an insured depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

(C) QUALIFICATION AND LICENSING REQUIREMENTS.—Standards prohibiting any insured depository institution from permitting any person to sell or

offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

(e) DOMESTIC VIOLENCE DISCRIMINATION PROHIBITION.—

(1) REGULATIONS REQUIRED.—The Federal banking agencies shall jointly establish regulations which shall prohibit discrimination, except as required under State law, against victims of domestic violence by prohibiting the consideration of such status as a criterion in any decision with regard to insurance underwriting, pricing, renewal of insurance policies, or payment of insurance claims.

(2) SCOPE OF APPLICATION.—The regulations prescribed under paragraph (1) shall apply to any insurance product which is sold or offered for sale, as principal, agent, or broker, by any insured depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.

(3) SENSE OF THE CONGRESS.—It is the sense of the Congress that, by the end of the 30-month period beginning on the date of the enactment of this Act, the States should enact or adopt regulations prohibiting discrimination with respect to insurance products that are at least as strict as the regulations required by paragraph (1) of this subsection.

(f) CONSUMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer complaints alleging a violation of regulations issued under the section, which shall—

(1) establish a group within each regulatory agency to receive such complaints;

(2) develop procedures for investigating such complaints;

(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and

(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

(g) NO EFFECT ON OTHER AUTHORITY.—No provision of this section shall be construed as granting, limiting, or otherwise affecting—

(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law;

(B) any authority of any State insurance commissioner or other State authority under any State law; or

(C) the applicability of any State law, or any regulation prescribed by any State insurance commissioner or other State authority pursuant to any such law, to any person.

(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) APPROPRIATE FEDERAL BANKING AGENCY; INSURED DEPOSITORY INSTITUTION.—The terms "appropriate Federal banking agency" and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(2) INSURANCE PRODUCT.—The term "insurance product" includes an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

SEC. 309. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES.

No State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or restrict any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), from becoming a financial holding company or acquiring control of an insured depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of an insured depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, restrict, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary

of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

Subtitle B—Redomestication of Mutual Insurers

SEC. 311. GENERAL APPLICATION.

This subtitle shall only apply to a mutual insurance company in a State which has not enacted a law which expressly establishes reasonable terms and conditions for a mutual insurance company domiciled in such State to reorganize into a mutual holding company.

SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.

(a) REDOMESTICATION.—A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile and consistent with the standards in subsection (f), the mutual insurer becomes a stock insurer that is a direct or indirect subsidiary of a mutual holding company.

(b) RESULTING DOMICILE.—Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(c) LICENSES PRESERVED.—The certificate of authority, agents' appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subtitle shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

(d) EFFECTIVENESS OF OUTSTANDING POLICIES AND CONTRACTS.—

(1) IN GENERAL.—All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.

(2) FORMS.—

(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.

(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.

(e) NOTICE.—A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each such licensed State.

(f) PROCEDURAL REQUIREMENTS.—No mutual insurer may redomesticate to another State and reorganize into a mutual holding company pursuant to this section unless the State insurance regulator of the transferee domicile determines that the plan of reorganization of the insurer includes the following requirements:

(1) APPROVAL BY BOARD OF DIRECTORS AND POLICYHOLDERS.—The reorganization is approved by at least a majority of the board of directors of the mutual insurer and at least a majority of the policyholders who vote after notice, disclosure of the reorganization and the effects of the transaction on policyholder contractual rights, and reasonable opportunity to vote, in accordance with such notice, disclosure, and voting procedures as are approved by the State insurance regulator of the transferee domicile.

(2) CONTINUED VOTING CONTROL BY POLICYHOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—After the consummation of a reorganization, the policyholders of the reorganized insurer shall have the same voting rights with respect to the mutual holding company as they had before the reorganization with respect to the mutual insurer. With respect to an initial public offering of stock, the offering shall be conducted in compliance with applicable securities laws and in a manner approved by the State insurance regulator of the transferee domicile.

(3) AWARD OF STOCK OR GRANT OF OPTIONS TO OFFICERS AND DIRECTORS.—For a period of 6 months after completion of an initial public offering, neither a stock holding company nor the converted insurer shall award any stock options

or stock grants to persons who are elected officers or directors of the mutual holding company, the stock holding company, or the converted insurer, except with respect to any such awards or options to which a person is entitled as a policyholder and as approved by the State insurance regulator of the transferee domicile.

(4) CONTRACTUAL RIGHTS.—Upon reorganization into a mutual holding company, the contractual rights of the policyholders are preserved.

(5) FAIR AND EQUITABLE TREATMENT OF POLICYHOLDERS.—The reorganization is approved as fair and equitable to the policyholders by the insurance regulator of the transferee domicile.

SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMESTICATION.

(a) IN GENERAL.—Unless otherwise permitted by this subtitle, State laws of any transferor domicile that conflict with the purposes and intent of this subtitle are preempted, including but not limited to—

(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insurer or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate, or has redomesticated, pursuant to this subtitle;

(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person or entity has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate, or has redomesticated, pursuant to this subtitle, but only to the extent that such law would treat such insured licensee or other intermediary differently than if the person or entity procured insurance from, or placed insurance with, an insured licensee or other intermediary which had not redomesticated;

(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual insurer pursuant to this subtitle, any certificate of authority, agent appointment or license, rate approval, or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

(b) DIFFERENTIAL TREATMENT PROHIBITED.—No State law, regulation, interpretation, or functional equivalent thereof, of a State other than a transferee domicile may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.

(c) LAWS PROHIBITING OPERATIONS.—If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer immediately following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to—

(1) comply with the unfair claim settlement practices law of the licensed State;

(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(4) submit to an examination by the State insurance regulator in any licensed state in which the redomesticated insurer is doing business to determine the insurer's financial condition, if—

(A) the State insurance regulator of the transferee domicile has not begun an examination of the redomesticated insurer and has not scheduled such an examination to begin before the end of the 1-year period beginning on the date of the redomestication; and

(B) any such examination is coordinated to avoid unjustified duplication and repetition;

(5) comply with a lawful order issued in—

(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or

(B) a voluntary dissolution proceeding;

(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in section 314(a);

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

(9) require a person acting, or offering to act, as an insurance licensee for a redomesticated insurer in the licensed State to obtain a license from that State, except that such State may not impose any qualification or requirement that discriminates against a nonresident insurance licensee.

SEC. 314. OTHER PROVISIONS.

(a) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section involving any redomesticating or redomesticated insurer.

(b) SEVERABILITY.—If any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of the section, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 315. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) COURT OF COMPETENT JURISDICTION.—The term "court of competent jurisdiction" means a court authorized pursuant to section 314(a) to adjudicate litigation arising under this subtitle.

(2) DOMICILE.—The term "domicile" means the State in which an insurer is incorporated, chartered, or organized.

(3) INSURANCE LICENSEE.—The term "insurance licensee" means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.

(4) INSTITUTION.—The term "institution" means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.

(5) LICENSED STATE.—The term "licensed State" means any State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

(6) MUTUAL INSURER.—The term "mutual insurer" means a mutual insurer organized under the laws of any State.

(7) PERSON.—The term "person" means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.

(8) POLICYHOLDER.—The term "policyholder" means the owner of a policy issued by a mutual insurer, except that, with respect to voting rights, the term means a member of a mutual insurer or mutual holding company granted the right to vote, as determined under applicable State law.

(9) REDOMESTICATED INSURER.—The term "redomesticated insurer" means a mutual insurer that has redomesticated pursuant to this subtitle.

(10) REDOMESTICATING INSURER.—The term "redomesticating insurer" means a mutual insurer that is redomesticating pursuant to this subtitle.

(11) REDOMESTICATION OR TRANSFER.—The terms "redomestication" and "transfer" mean the transfer of the domicile of a mutual insurer from one State to another State pursuant to this subtitle.

(12) STATE INSURANCE REGULATOR.—The term "State insurance regulator" means the principal insurance regulatory authority of a State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands.

(13) STATE LAW.—The term "State law" means the statutes of any State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands and any regulation, order, or requirement prescribed pursuant to any such statute.

(14) TRANSFEREE DOMICILE.—The term "transferee domicile" means the State to which a mutual insurer is redomesticating pursuant to this subtitle.

(15) TRANSFEROR DOMICILE.—The term "transferor domicile" means the State from which a mutual insurer is redomesticating pursuant to this subtitle.

SEC. 316. EFFECTIVE DATE.

This subtitle shall take effect on the date of enactment of this Act.

Subtitle C—National Association of Registered Agents and Brokers

SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.

(a) IN GENERAL.—The provisions of this subtitle shall take effect unless by the end of the 3-year period beginning on the date of the enactment of this Act at least a majority of the States—

(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or

(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.

(b) UNIFORMITY REQUIRED.—States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) if the States—

(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;

(2) establish uniform continuing education requirements for licensed insurance producers;

(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);

(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and

(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(c) RECIPROCITY REQUIRED.—States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) if the following conditions are met:

(1) ADMINISTRATIVE LICENSING PROCEDURES.—At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent such producer is permitted to sell or solicit the purchase of insurance in its State, without satisfying any additional requirements other than submitting—

(A) a request for licensure;

(B) the application for licensure that the producer submitted to its home State;

(C) proof that the producer is licensed and in good standing in its home State; and

(D) the payment of any requisite fee to the appropriate authority, if the producer's home State also awards such licenses on such a reciprocal basis.

(2) CONTINUING EDUCATION REQUIREMENTS.—A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.

(3) NO LIMITING NONRESIDENT REQUIREMENTS.—A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(4) RECIPROCAL RECIPROCITY.—Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.

(d) DETERMINATION.—

(1) NAIC DETERMINATION.—At the end of the 3-year period beginning on the date of the enactment of this Act, the National Association of Insurance Commissioners shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) has been achieved.

(2) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over any challenge to the National Association of Insurance Commissioners' determination under this section and such court shall apply the standards set forth in section 706 of title 5, United States Code, when reviewing any such challenge.

(e) CONTINUED APPLICATION.—If, at any time, the uniformity or reciprocity required by subsections (b) and (c) no longer exists, the provisions of this subtitle shall take effect within 2 years, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.

(f) SAVINGS PROVISION.—No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c), unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.

SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.

(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (hereafter in this subtitle referred to as the "Association")

(b) STATUS.—The Association shall—

(1) be a nonprofit corporation and be presumed to have the status of an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 unless the Secretary of the Treasury determines that the Association does not meet the requirements of such section;

(2) have succession until dissolved by an Act of Congress;

(3) not be an agency or establishment of the United States Government; and

(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y–1001 et seq.).

SEC. 323. PURPOSE.

The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.

The Association shall be subject to the supervision and oversight of the National Association of Insurance Commissioners (hereafter in this subtitle referred to as the "NAIC") and shall not be an agency or an instrumentality of the United States Government.

SEC. 325. MEMBERSHIP.

(a) ELIGIBILITY.—

(1) IN GENERAL.—Any State-licensed insurance producer shall be eligible to become a member in the Association.

(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year preceding the date such producer applies for membership.

(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or

(B) the suspension or revocation is subsequently overturned.

(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association shall have the authority to establish membership criteria that—

(1) bear a reasonable relationship to the purposes for which the Association was established; and

(2) do not unfairly limit the access of smaller agencies to the Association membership.

(c) ESTABLISHMENT OF CLASSES AND CATEGORIES.—

(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

(2) CATEGORIES.—The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing categories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are insured depository institutions or wholesale financial institutions or for their employees, agents, or affiliates.

(d) MEMBERSHIP CRITERIA.—

(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.

(2) MINIMUM STANDARD.—In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(e) EFFECT OF MEMBERSHIP.—Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.

(f) ANNUAL RENEWAL.—Membership in the Association shall be renewed on an annual basis.

(g) CONTINUING EDUCATION.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.

(h) SUSPENSION AND REVOCATION.—The Association may—

(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and

(2) suspend or revoke the membership of an insurance producer if—

(A) the producer fails to meet the applicable membership criteria of the Association: or

(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

(i) OFFICE OF CONSUMER COMPLAINTS.—

(1) IN GENERAL.—The Association shall establish an office of consumer complaints that shall—

(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.

(2) RECORDS AND REFERRALS.—The office of consumer complaints of the Association shall—

(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and

(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.

(3) TELEPHONE AND OTHER ACCESS.—The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet home page.

SEC. 326. BOARD OF DIRECTORS.

(a) ESTABLISHMENT.—There is established the board of directors of the Association (hereafter in this subtitle referred to as the "Board") for the purpose of governing and supervising the activities of the Association and the members of the Association.

(b) POWERS.—The Board shall have such powers and authority as may be specified in the bylaws of the Association.

(c) COMPOSITION.—

(1) MEMBERS.—The Board shall be composed of 7 members appointed by the NAIC.

(2) REQUIREMENT.—At least 4 of the members of the Board shall have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.

(3) INITIAL BOARD MEMBERSHIP.—

(A) IN GENERAL.—If, by the end of the 2-year period beginning on the date of the enactment of this Act, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-lines insurance in place as of the end of such period.

(B) ALTERNATE COMPOSITION.—If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.

(C) INOPERABILITY.—If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 332.

(d) TERMS.—The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with ⅓ of the directors to be appointed each year.

(e) BOARD VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.

(f) MEETINGS.—The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

SEC. 327. OFFICERS.

(a) IN GENERAL.—

(1) POSITIONS.—The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.

(2) MANNER OF SELECTION.—Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

(b) CRITERIA FOR CHAIRPERSON.— Only individuals who are members of the National Association of Insurance Commissioners shall be eligible to serve as the chairperson of the board of directors.

SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.

(a) ADOPTION AND AMENDMENT OF BYLAWS.—

(1) COPY REQUIRED TO BE FILED WITH THE NAIC.—The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

(2) EFFECTIVE DATE.—Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—

(A) 30 days after the date of the filing of a copy with the NAIC;

(B) upon such later date as the Association may designate; or

(C) such earlier date as the NAIC may determine.

(3) DISAPPROVAL BY THE NAIC.—Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—

(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subtitle and provides notice to the Association setting forth the reasons for such disapproval; or

(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such paragraph.

(b) ADOPTION AND AMENDMENT OF RULES.—

(1) FILING PROPOSED REGULATIONS WITH THE NAIC.—

(A) IN GENERAL.—The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

(B) OTHER RULES AND AMENDMENTS INEFFECTIVE.—No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

(2) INITIAL CONSIDERATION BY THE NAIC.—Within 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date if the NAIC finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall—

(A) by order approve such proposed rule or amendment; or

(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.

(3) NAIC PROCEEDINGS.—

(A) IN GENERAL.—Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—

(i) include notice of the grounds for disapproval under consideration;

(ii) provide opportunity for hearing; and

(iii) be concluded within 180 days after the date of the Association's filing of such proposed rule or amendment.

(B) DISPOSITION OF PROPOSAL.—At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.

(C) EXTENSION OF TIME FOR CONSIDERATION.—The NAIC may extend the time for concluding any proceeding under subparagraph (A) for—

(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or

(ii) for such longer period as to which the Association consents.

(4) STANDARDS FOR REVIEW.—

(A) GROUNDS FOR APPROVAL.—The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.

(B) APPROVAL BEFORE END OF NOTICE PERIOD.—The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date the Association files proposed rules or amendments in accordance with paragraph (1) unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.

(5) ALTERNATE PROCEDURE.—

(A) IN GENERAL.—Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to the administration or organization of the Association may take effect—

(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the NAIC shall for good cause determine.

(B) ABROGATION BY THE NAIC.—

(i) IN GENERAL.—At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or (B)(ii), the NAIC may repeal such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subtitle.

(ii) EFFECT OF RECONSIDERATION BY THE NAIC.—Any action of the NAIC pursuant to clause (i) shall—

(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and

(II) not be considered to be final action.

(c) ACTION REQUIRED BY THE NAIC.—The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subtitle, require the Association to adopt, amend, or repeal any bylaw, rule or amendment of the Association, whenever adopted.

(d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, and not renewed (hereafter in this section referred to as a "disciplinary action"), the Association shall bring specific charges, notify such member of such charges and give the member an opportunity to defend against the charges, and keep a record.

(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which such member has been found to have been engaged;

(B) the specific provision of this subtitle, the rules or regulations under this subtitle, or the rules of the Association which any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for such sanction.

(e) NAIC REVIEW OF DISCIPLINARY ACTION.—

(1) NOTICE TO THE NAIC.—If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.

(2) REVIEW BY THE NAIC.—Any disciplinary action taken by the Association shall be subject to review by the NAIC—

(A) on the NAIC's own motion; or

(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—

(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or

(ii) the date the notice of the disciplinary action was received by such aggrieved person.

(f) EFFECT OF REVIEW.—The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.

(g) SCOPE OF REVIEW.—

(A) IN GENERAL.—In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—

(i) determine whether the action should be taken;

(ii) affirm, modify, or rescind the disciplinary sanction; or

(iii) remand to the Association for further proceedings.

(B) DISMISSAL OF REVIEW.—The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—

(i) the specific grounds on which the action is based exist in fact;

(ii) the action is in accordance with applicable rules and regulations; and

(iii) such rules and regulations are, and were, applied in a manner consistent with the purposes of this Act.

SEC. 329. ASSESSMENTS.

(a) INSURANCE PRODUCERS SUBJECT TO ASSESSMENT.—The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b), except that, in setting such fees, the Association may not discriminate against smaller insurance producers.

(b) NAIC ASSESSMENTS.—The NAIC may assess the Association for any costs it incurs under this subtitle.

SEC. 330. FUNCTIONS OF THE NAIC.

(a) ADMINISTRATIVE PROCEDURE.—Determinations of the NAIC, for purposes of making rules pursuant to section 328, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.

(b) EXAMINATIONS AND REPORTS.—

(1) The NAIC may make such examinations and inspections of the Association and require the Association to furnish it with such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subtitle.

(2) As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.

SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.

(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND EMPLOYEES.—Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subtitle.

SEC. 332. ELIMINATION OF NAIC OVERSIGHT.

(a) IN GENERAL.—The Association shall be established without NAIC oversight and the provisions set forth in section 324, subsections (a), (b), (c), and (e) of section 328, and sections 329(b) and 330 of this subtitle shall cease to be effective if, at the end of the 2-year period after the date on which the provisions of this subtitle take effect pursuant to section 321—

(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a) and (b) of section 321; and

(2) the NAIC has not approved the Association's bylaws as required by section 328, the NAIC is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.

(b) BOARD APPOINTMENTS.—If the repeals required by subsection (a) are implemented—

(1) GENERAL APPOINTMENT POWER.—The President, with the advice and consent of the United States Senate, shall appoint the members of the Association's Board established under section 326 from lists of candidates recommended to the President by the National Association of Insurance Commissioners.

(2) PROCEDURES FOR OBTAINING NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS APPOINTMENT RECOMMENDATIONS.—

(A) INITIAL DETERMINATION AND RECOMMENDATIONS.—After the date on which the provisions of part a of this section take effect, then the National Association of Insurance Commissioners shall have 60 days to provide a list of recommended candidates to the President. If the National Association of Insurance Commissioners fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 326(c), the President shall, with the advice and consent of the United States Senate, make the requisite appointments without considering the views of the NAIC.

(B) SUBSEQUENT APPOINTMENTS.—After the initial appointments, the National Association of Insurance Commissioners shall provide a list of at least 6 recommended candidates for the Board to the President by January 15 of each subsequent year. If the National Association of Insurance Commissioners fails to provide a list by that date, or if any list that is provided does not include at least 6 recommended candidates or comply with the requirements of section 326(c), the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.

(C) PRESIDENTIAL OVERSIGHT.—

(i) REMOVAL.—If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

(ii) SUSPENSION OF RULES OR ACTIONS.—The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

(d) ANNUAL REPORT.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

SEC. 333. RELATIONSHIP TO STATE LAW.

(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or actions purporting to regulate insurance producers shall be preempted in the following instances:

(1) No State shall impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association.

(2) No State shall impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency.

(3) No State shall impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different than the criteria for membership in the Association or renewal of such membership, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(4) No State shall implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 325.

(b) SAVINGS PROVISION.—Except as provided in subsection (a), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including, but not limited to, countersignature laws.

SEC. 334. COORDINATION WITH OTHER REGULATORS.

(a) COORDINATION WITH STATE INSURANCE REGULATORS.—The Association shall have the authority to—

(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 333;

(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and

(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

(b) COORDINATION WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS.—The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subtitle and the Federal securities laws.

SEC. 335. JUDICIAL REVIEW.

(a) JURISDICTION.—The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subtitle. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

(b) EXHAUSTION OF REMEDIES.—An aggrieved person must exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.

(c) STANDARDS OF REVIEW.—The standards set forth in section 553 of title 5, United States Code, shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5, United States Code, shall be applied whenever a disciplinary action of the Association is judicially reviewed.

SEC. 336. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) INSURANCE.—The term "insurance" means any product defined or regulated as insurance by the appropriate State insurance regulatory authority.

(2) INSURANCE PRODUCER.—The term "insurance producer" means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

(3) STATE LAW.—The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(4) STATE.—The term "State" includes any State, the District of Columbia, American Samoa, Guam, Puerto Rico, and the United States Virgin Islands.

(5) HOME STATE.—The term "home State" means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

TITLE IV—MERGER OF BANK AND THRIFT CHARTERS, REGULATORS, AND INSURANCE FUNDS

SEC. 401. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the "Thrift Charter Transition Act of 1997".

(b) DEFINITIONS.—Unless otherwise defined in this title, the terms "bank holding company", "depository institution", "Federal savings association", "insured depository institution", "savings association", "State bank", and "State savings association" have the same meanings as in section 3 of the Federal Deposit Insurance Act, as in effect on the day before the date of enactment of this Act.

Subtitle A—Facilitating Conversion of Savings Associations to Banks

SEC. 411. CONVERSION TO STATE OR NATIONAL BANKS.

(a) AUTOMATIC CONVERSION OF FEDERAL SAVINGS ASSOCIATIONS TO NATIONAL BANKS.—

(1) IN GENERAL.—Effective 2 years after the date of enactment of this Act, each Federal savings association then in existence shall be converted to a national bank by operation of law.

(2) PRESERVATION OF RIGHTS, POWERS, AND PRIVILEGES.—Unless otherwise provided in this Act, a Federal savings association that is converted to a State bank or a national bank under this section shall continue to have all of the rights, powers, privileges, and immunities that such bank had as a Federal savings association on the day before the date of the conversion to a bank.

(3) RETENTION OF "FEDERAL" IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—Section 2 of the Act entitled "An Act to enable national banking associations to increase their capital stock and to change their names or locations." and approved May 1, 1886 (12 U.S.C. 30) is amended by adding at the end the following new subsection:

"(d) RETENTION OF 'FEDERAL' IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—

"(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Act of 1997 may retain the term

'Federal' in the name of such institution so long as such depository institution remains an insured depository institution.

"(2) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'insured depository institution', 'national bank', and 'State bank' have the same meanings given to such terms in section 3 of the Federal Deposit Insurance Act.".

(b) EARLIER CONVERSIONS TO NATIONAL BANK.—The following paragraphs shall apply during the 22-month period beginning 60 days after the date of enactment of this Act:

(1) ACCELERATED CONVERSION OF FEDERAL SAVINGS ASSOCIATIONS.—Any Federal savings association may file with the Comptroller of the Currency a notice of its election to accelerate its conversion to a national bank to a specified date that is not earlier than 30 days after the date on which the notice is filed, and the association shall be converted to a national bank on the date specified in the notice.

(2) STREAMLINED CONVERSION OF STATE SAVINGS ASSOCIATIONS.—Any State savings association may (to the extent consistent with State law) convert to a national bank by filing with the Comptroller of the Currency a notice of its election to convert on a specified date that is not earlier than 30 days after the date on which the notice is filed, and the association shall be converted to a national bank on the date specified in the notice.

(c) CONVERSION TO MUTUAL NATIONAL BANK.—A savings association that is operating in mutual form on the date it is converted to a national bank under this section shall be converted to a mutual national bank as defined in section 5133A of the Revised Statutes of the United States.

(d) OTHER AUTHORITY NOT AFFECTED.—The authority to convert to a national bank under this section shall be in addition to any other authority of a savings association to convert to a national bank, State bank, or State savings association.

(e) EFFECTIVE DATE.—This section shall take effect 60 days after the date of enactment of this Act.

SEC. 412. MUTUAL NATIONAL BANKS AND FEDERAL MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5133 the following new sections:

"SEC. 5133A. MUTUAL NATIONAL BANKS.

"(a) IN GENERAL.—The Comptroller of the Currency may charter national banking associations as mutual national banks, either de novo or through the conversion of an insured depository institution, in accordance with this section and such regulations as the Comptroller may prescribe.

"(b) APPLICABLE LAW.—Unless otherwise provided by this section or by the Comptroller of the Currency because of the mutual form of the institution, a mutual national bank—

"(1) shall be subject to the same laws, requirements, duties, and obligations that apply to a national banking association operating in stock form;

"(2) shall have the same powers and privileges as, and may engage in the same activities subject to the same restrictions and limitations that apply to, a national banking association operating in stock form; and

"(3) shall be supervised and examined by the Comptroller in the same manner and to the same extent as a national banking association operating in stock form.

"(c) CONVERSIONS.—Subject to any requirements imposed by the Comptroller—

"(1) a mutual national bank may convert to, or acquire and retain all or substantially all of the assets and liabilities of, a national banking association operating in stock form; and

"(2) a national banking association operating in stock form may convert to a mutual national bank.

"(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(2) MUTUAL NATIONAL BANK.—The term 'mutual national bank' means a national banking association that operates in mutual form and is chartered by the Comptroller under this section.

"(e) CONFORMING REFERENCES.—Unless otherwise provided by the Comptroller—

"(1) any reference in any Federal law to a national bank, including a reference to the term 'national banking association', 'member bank', 'national bank', 'national association', 'bank', 'insured bank', 'insured depository institution', or 'depository institution', shall be deemed to refer also to a 'mutual national bank';

"(2) any reference in any Federal law to the term 'shareholder', 'shareholders', 'stockholder', or 'stockholders' of a national bank shall be deemed to refer also to any member or members of a mutual national bank;

"(3) any reference in any Federal law to the term 'board of directors', 'director', or 'directors' of a national bank shall be deemed to refer also to the board of trustees, trustee, or trustees, respectively, of a mutual national bank; and

"(4) any terms in Federal law that may apply only to a national bank operating in stock form, including the terms 'stock', 'shares', 'shares of stock', 'capital stock', 'common stock', 'stock certificate', 'stock certificates', 'certificate representing shares of stock', 'stock dividend', 'transferable stock', 'each class of stock', 'cumulate such shares', 'par value', 'preferred stock', 'body corporate', 'corporation', 'corporate powers', 'incorporated', 'articles of association', and 'corporate existence', shall not apply to a mutual national bank, unless the Comptroller determines that the context requires otherwise.

"SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPANIES.

"(a) REORGANIZATION OF MUTUAL NATIONAL BANK AS A HOLDING COMPANY.—

"(1) IN GENERAL.—Subject to approval under the Bank Holding Company Act of 1956, a mutual national bank may reorganize so as to become a Federal mutual bank holding company by submitting a reorganization plan to the Comptroller of the Currency for the Comptroller's approval.

"(2) PLAN APPROVAL.—Upon the approval of the reorganization plan by the Comptroller of the Currency and the issuance of the appropriate charters—

"(A) the substantial part of the mutual national bank's assets and liabilities, including all of the bank's insured liabilities, shall be transferred to a national banking association, the stock of which is owned (except as otherwise provided by this section) by the mutual national bank; and

"(B) the mutual national bank shall become a Federal mutual bank holding company.

"(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS' APPROVAL OF PLAN REQUIRED.—This subsection does not authorize a reorganization unless—

"(1) a majority of the mutual national bank's board of directors has approved the plan providing for such reorganization; and

"(2) in the case of a mutual national bank in which holders of accounts and obligors exercise voting rights, a majority of such individuals has approved the plan at a meeting held at the call of the directors under the procedures prescribed by the bank's charter and bylaws.

"(c) RETENTION OF CAPITAL.—In connection with a transaction described in subsection (a), a mutual national bank may, subject to the Comptroller's approval, retain capital at the holding company level to the extent that the capital retained at the holding company level exceeds the amount of capital required for the national banking association chartered as a part of a transaction described in subsection (a) to meet all relevant capital standards established by the Comptroller for national banking associations.

"(d) OWNERSHIP.—

"(1) IN GENERAL.—Persons having ownership rights in the mutual national bank under Federal or State law shall have the same ownership rights with respect to the Federal mutual bank holding company.

"(2) HOLDERS OF CERTAIN ACCOUNTS.—Holders of savings, demand, or other accounts in the following institutions shall have the same ownership rights with respect to the Federal mutual bank holding company as persons described in paragraph (1):

"(A) A national bank chartered as part of a transaction described in subsection (a).

"(B) A mutual bank acquired through the merger of the mutual bank into a national bank subsidiary of the holding company or an interim national bank subsidiary of the holding company.

"(e) REGULATION.—A Federal mutual bank holding company shall be—

"(1) chartered by the Comptroller of the Currency and shall be subject to such regulations as the Comptroller shall prescribe; and

"(2) regulated under the Bank Holding Company Act of 1956 on the same terms and subject to the same limitations as any other company that controls a bank.

"(f) CAPITAL IMPROVEMENT.—

"(1) PLEDGE OF STOCK OF NATIONAL BANK SUBSIDIARY.—This section shall not prohibit a Federal mutual bank holding company from pledging all or a portion of the stock of a national banking association chartered as part of a transaction described in subsection (a) to raise capital for such bank.

"(2) ISSUANCE OF NONVOTING SHARES.—This section shall not prohibit a national banking association chartered as part of a transaction described in subsection (a) from issuing any nonvoting shares, or less than 50 percent of the voting shares of such bank, to any person other than the Federal mutual bank holding company.

"(g) INSOLVENCY AND LIQUIDATION.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, the Comptroller of the Currency may file a petition under chapter 7 of title 11, United States Code, with respect to a Federal mutual bank holding company upon—

"(A) the default of any national bank—

"(i) the stock of which is owned by the Federal mutual bank holding company; and

"(ii) that was chartered in a transaction described in subsection (a); or

"(B) a foreclosure on a pledge by the Federal mutual bank holding company described in subsection (f)(1).

"(2) DISTRIBUTION OF NET PROCEEDS.—Except as provided in paragraph (3), the net proceeds of any liquidation of any Federal mutual bank holding company under paragraph (1) shall be transferred to persons who hold ownership interests in such Federal mutual bank holding company.

"(3) RECOVERY BY FDIC.—If the Federal Deposit Insurance Corporation incurs a loss as a result of the default of any insured bank subsidiary of a Federal mutual bank holding company that is liquidated under paragraph (1), the Federal Deposit Insurance Corporation shall succeed to the ownership interests of the depositors of the bank in the Federal mutual bank holding company, to the extent of the Federal Deposit Insurance Corporation's loss.

"(h) DEFINITIONS.—

"(1) FEDERAL MUTUAL BANK HOLDING COMPANY.—The term 'Federal mutual bank holding company' means a corporation chartered under this section.

"(2) DEFAULT.—With respect to a national bank, the term 'default' means an adjudication or other official determination by any court of competent jurisdiction, the Comptroller, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for the national bank.".

(b) TECHNICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq) is amended by inserting after the item relating to section 5133 the following new items:

"5133A. Mutual national banks.
"5133B. Federal mutual bank holding companies.".

(c) APPROPRIATE FEDERAL BANKING AGENCY FOR FEDERAL MUTUAL BANK HOLDING COMPANIES.—Section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(1)) is amended to read as follows:

"(1) The Comptroller of the Currency in the case of—

"(A) any national banking association, any District bank, or any Federal branch or agency of a foreign bank; and

"(B) supervisory or regulatory proceedings arising from the authority given to the Comptroller under section 5133B of the Revised Statutes of the United States.".

(d) MUTUAL HOLDING COMPANY CONVERSION.—

(1) IN GENERAL.—Any mutual holding company may convert to a Federal mutual bank holding company by filing with the Comptroller of the Currency a notice of its election to convert on a specified date that is not earlier than 30 days after the date on which the notice is filed, and the mutual holding company shall be converted to a Federal mutual holding company charter on the date specified in the notice.

(2) AUTOMATIC CONVERSION.—On the date 2 years after the date of enactment of this Act, each mutual holding company shall become a Federal mutual bank holding company by operation of law.

(3) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) FEDERAL MUTUAL BANK HOLDING COMPANY.—The term "Federal mutual bank holding company" has the same meaning as in section 5133B of the Revised Statutes of the United States (as added by this section).

(B) MUTUAL HOLDING COMPANY.—The term "mutual holding company" has the same meaning as in section 10(o)(10)(A) of the Home Owners' Loan Act as in effect on the day before the date of enactment of this Act.

(e) LIMITATION ON FEDERAL REGULATION OF MUTUAL STATE BANKS.—Except as otherwise provided in Federal law, the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation may not adopt or enforce any regulation which contravenes the corporation governance rules prescribed by State law or regulation for mutual State banks unless the Comptroller, Board, or Corporation finds that such Federal regulation is necessary to assure the safety and soundness of such State banks.

(f) EFFECTIVE DATE.—This section shall take effect 60 days after the date of enactment of this Act.

SEC. 413. GRANDFATHERED ACTIVITIES OF SAVINGS ASSOCIATIONS.

(a) SAVINGS ASSOCIATIONS THAT CONVERT TO NATIONAL BANKS.—

(1) POWERS OF CONVERTED SAVINGS ASSOCIATIONS.—A national bank that resulted from the conversion of a savings association under section 411 may not engage in any activity, including the holding of any asset, except as provided in this section, or as otherwise permitted for a national bank that does not result from the conversion of a savings association.

(2) GRANDFATHERED ACTIVITIES.—Except as provided in subsection (b), any Federal savings association that converted to a national bank under section 411 may continue to engage in any activity, including the holding of any asset, in which it was lawfully engaged prior to conversion pursuant to section 411.

(b) INVESTMENTS NOT AUTHORIZED FOR NATIONAL BANKS TO HOLD DIRECTLY.—

(1) IN GENERAL.—Notwithstanding section 5136 of the Revised Statutes of the United States or any other provision of law, a national bank resulting from the conversion of a savings association to a national bank under section 411 may retain an equity investment that is not permissible for a national bank to hold directly only if the bank complies with section 5(t)(5) of the Home Owners' Loan Act (as in effect on the day before the date of the enactment of the Thrift Charter Transition Act of 1997) to the same extent as if the institution were a savings association subject to the Home Owners' Loan Act.

(2) REGULATIONS OF EXISTING ACTIVITIES.—Investments held by a national bank resulting from the conversion of a savings association referred to in paragraph (1) held on the date of the enactment of the Thrift Charter Transition Act of 1997 shall be subject to the same regulations and supervision as if the institution were a savings association subject to the Home Owners' Loan Act as in effect on the day before the date of the enactment of the Thrift Charter Transition Act of 1997.

(3) INVESTMENTS ACQUIRED AFTER ENACTMENT.—For investments acquired after the date of enactment of the Thrift Charter Transition Act of 1997 but before the conversion of a savings association to a national bank under section 411, such national bank—

(A) may, if a subsidiary of the bank is engaged in an activity that is not permissible for a national bank to engage in directly, retain an equity investment in the subsidiary only if the bank and the subsidiary comply with section 5136A of the Revised Statutes of the United States; and

(B) shall, in determining compliance with applicable capital standards, deduct from the bank's assets and tangible equity capital the amount of any equity investment (other than investment subject to subparagraph (A)) that is not a permissible investment for a national bank to hold directly.

(c) PERMISSIBLE ACTIVITIES OF STATE SAVINGS ASSOCIATIONS THAT CONVERT TO STATE BANKS.—For purposes of section 24 of the Federal Deposit Insurance Act, a State savings association that converts to a State bank may, to the extent permitted by applicable State law, continue to engage (in the same manner) in any activity, including the holding of any asset, permitted under section 28 of the Federal Deposit Insurance Act (as in effect on the day before the date of enactment of this Act) in which the savings association was lawfully engaged on the day before the date of enactment of this Act.

(d) TRANSITION PROVISION.—Notwithstanding any other provision of this Act, in the case of any insured savings association described in this section securities offerings and other financing transactions completed by such an institution on or before the date of its conversion pursuant to section 411 shall continue to be governed by the capital and accounting rules of the Office of Thrift Supervision as in effect on the date that such institution converts to a bank or becomes treated as a State bank.

SEC. 414. BRANCHES OF FORMER SAVINGS ASSOCIATIONS.

(a) BRANCHES.—

(1) EXISTING BRANCHES RETAINED.—Notwithstanding any other provision of law, any depository institution that qualifies under paragraph (2), and any successor to such an institution, may continue, after the depository institution becomes a bank, to operate any branch or agency that the institution operated as a branch or agency, or was in the process of establishing as a branch or agency, respectively, as of the date of enactment of the Thrift Charter Transition Act of 1997.

(2) DEPOSITORY INSTITUTION DEFINED.—A depository institution qualifies under this paragraph for purposes of paragraph (1) if it—

(A)(i) is a savings association on the date of enactment of the Thrift Charter Transition Act of 1997; or

(ii) has filed an application to become a savings association by the date of enactment of the Thrift Charter Transition Act of 1997; and

(B) on or before the date 2 years after the date of enactment of this Act, becomes a State or national bank.

(b) BRANCHING RIGHTS OBTAINED IN ASSISTED ACQUISITIONS.—Notwithstanding any other provision of law, if a depository institution has branching rights under a contract entered into with the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation or pursuant to a resolution of the Federal Home Loan Bank Board or action of the Office of Thrift Supervision or Resolution Trust Corporation as part of a transaction in which the depository institution acquired or merged with a failed or failing savings association (prior to 1992), the depository institution may continue to branch in a manner consistent with that contract, resolution, or action.

(c) BRANCHING RIGHTS OF STATE CHARTERED INSTITUTIONS NOT AFFECTED.—Except as provided in subsection (b), applicable State law and Federal law shall govern the authority of a savings association that converts to a State savings association charter or a State bank charter to continue to operate any branch or agency that the institution operated prior to conversion and the future branching rights of the converted institution.

(d) INTRASTATE BRANCHES.—Any branch operated under subsection (a)(1) in a State other than the depository institution's home State may acquire, establish or operate additional branches in the host State to the same extent as permitted for a national bank with its main office located in the host State.

SEC. 415. PROGRAMS FOR PROMOTING HOUSING FINANCE.

Section 22 of the Federal Deposit Insurance Act (12 U.S.C. 1830) is amended by—

(1) striking "It is not" and inserting "(a) IN GENERAL.—It is not"; and

(2) adding at the end the following new subsection:

"(b) PROGRAMS FOR PROMOTING HOUSING FINANCE.—

"(1) FINDINGS.—The Congress finds that it is in the national interest to protect and promote housing finance in the process of converting savings associations to banks and eliminating the separate Federal regulation of savings associations.

"(2) PROGRAMS REQUIRED.—In furtherance of paragraph (1), each appropriate Federal banking agency shall—

"(A) develop and implement a program designed to—

"(i) facilitate the conversion of savings associations to banks and the treatment of State savings associations as State banks; and

"(ii) promote housing finance by assuring that insured depository institutions may, at their own election, specialize in acquisition, development, residential mortgage finance, and residential mortgage and housing production lending; and

"(B) develop guidelines and procedures for assuring that insured depository institutions are not subject to supervisory criticism or sanction for prudently concentrating in acquisition, development, residential mortgage finance, and residential mortgage and housing production lending.".

SEC. 416. SAVINGS AND LOAN HOLDING COMPANIES.

Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by inserting after subsection (g) the following new subsection:

"(h) SAVINGS AND LOAN HOLDING COMPANY POWERS GRANDFATHERED.—

"(1) IN GENERAL.—A company that qualifies under paragraph (2) may—

"(A) maintain or enter into any nonbank affiliation that the company was permitted pursuant to section 10 of the Home Owners' Loan Act to maintain or enter into prior to becoming a bank holding company pursuant to paragraph (2)(C); and

"(B) engage in any activity, including holding any asset, in which the company or any affiliate described in subparagraph (A) was permitted pursuant to section 10 of the Home Owners' Loan Act to engage before becoming a bank holding company in a manner described in paragraph (2)(C).

"(2) QUALIFIED GRANDFATHERED COMPANIES.—

"(A) GRANDFATHERED COMPANIES DEFINED.—A company qualifies under this paragraph for purposes of paragraph (1) if—

"(i) as of September 16, 1997, the company (or any affiliated company)—

"(I) was a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act, as in effect on that date); or

"(II) had filed an application to become a savings and loan holding company; and

"(ii) the company—

"(I) becomes a bank holding company by operation of law; or

"(II) was exempt from section 4 (as in effect on the date of enactment of the Thrift Charter Transition Act of 1997) under an order issued by the Board under section 4(d) (as in effect on the date of enactment of the Thrift Charter Transition Act of 1997).

"(B) HOLDING COMPANIES WITH IDENTICAL SHAREHOLDERS.—A company also qualifies under this paragraph for purposes of paragraph (1) if the company—

"(i) is formed by a company qualified under subparagraph (A); and

"(ii) the shareholders of such company are identical to the shareholders of the company referred to in (i).

"(C) OPERATION OF LAW DEFINED.—For purposes of this subsection, a savings and loan holding company becomes a bank holding company by operation of law if a savings association controlled by the company is converted to a bank or is treated as a bank under an amendment made by the Thrift Charter Transition Act of 1997.

"(3) REQUIREMENTS TO RETAIN GRANDFATHERED POWERS.—

"(A) IN GENERAL.—Paragraph (1) shall cease to apply to a company if the company does not comply with this paragraph.

"(B) ACQUISITION OF BANKS.—

"(i) IN GENERAL.—The company may not acquire (by any form of business combination) control of a bank after the date of enactment of the Thrift Charter Transition Act of 1997.

"(ii) EXCEPTIONS TO PROHIBITION.—Clause (i) shall not apply to the acquisition of—

"(I) a bank, during the period ending on the date 2 years after the date of enactment of the Thrift Charter Transition Act of 1997, if the acquisition results from the conversion of a savings association or the treatment of a savings association as a bank under amendments made by the Thrift Charter Transition Act of 1997;

"(II) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

"(III) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company or any subsidiary of the company and the beneficiaries of those employees;

"(IV) an entity described in section 2(c)(2);

"(V) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

"(VI) shares held in an account solely for trading purposes;

"(VII) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

"(VIII) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

"(X) a bank from the Federal Deposit Insurance Corporation, in any capacity; and

"(XI) a bank in an acquisition in which the bank has been found to be in danger of default by the appropriate Federal or State authority.

"(C) The company may not control a savings association or a national bank resulting from the conversion of a savings association to a national bank pursuant to section 411 if such savings association or national bank fails to comply with the requirements of section 5(c)(2) and section 10(m) of the Home Owners' Loan Act as in effect on the day before the date of the enactment of the Thrift Charter Transition Act of 1997.

"(4) GRANDFATHERED POWERS NONTRANSFERABLE.—

"(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any company if after the date of the enactment of the Thrift Charter Transition Act of 1997—

"(i) any company (other than a company qualified under paragraph (2)) not under common control with such company as of that date acquires, directly, or indirectly, control of the company; or

"(ii) the company is the subject of any merger, consolidation, or other type of business combination as a result of which a company (other than a company qualified under paragraph (2)) not under common control with such company acquires, directly or indirectly, control of such company.

"(B) ANTI-EVASION.—The appropriate Federal banking agency may issue interpretations, regulations, or orders that it deems necessary to administer and carry out the purpose, and prevent evasions, of this paragraph, including determining that (notwithstanding the form of a transaction) the transaction would in substance effect a change in control.

"(5) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—An insured depository institution controlled by a company that qualifies under paragraph (2) may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with—

"(A) any affiliate unless the affiliate is engaged only in activities authorized for a financial holding company pursuant to section 6 (other than subsection (f) or (g) of such section); or

"(B) any company controlled by an affiliate pursuant to subparagraphs (H) or (I) of subsection (c)(3) of such section.

"(6) SAVINGS AND LOAN HOLDING COMPANIES THAT BECOME BANK HOLDING COMPANIES.—

"(A) EXCLUSION FROM APPLICATION REQUIREMENT.—A company that qualifies under subparagraph (B) shall not be required to obtain the approval of the Board under subsection (a) to become a bank holding company if such company becomes a bank holding company after the date of enactment of the Thrift Charter Transition Act of 1997 as a result of the conversion of a savings association subsidiary to a bank or by virtue of the treatment of a savings association subsidiary as a bank under an amendment made by this Act.

"(B) COMPANIES EXCLUDED FROM APPLICATION REQUIREMENT.—A company qualifies for purposes of subparagraph (A) if the company, as of the date of the enactment of the Thrift Charter Transition Act of 1997, was a savings and loan holding company (as defined in section 10(a) of the Home Owners' Loan Act as in effect on that date) or has filed an application to become a savings and loan holding company.

"(C) SUPERVISION AND REGULATION OF COMPANIES THAT WERE PREVIOUSLY SAVINGS AND LOAN HOLDING COMPANIES.—

"(i) IN GENERAL.—Any company that qualifies under paragraph (2) and complies with paragraph (3) and was registered and regulated under section 10 of the Home Owners' Loan Act on the day before becoming a bank holding company described in paragraphs (2) and (3) shall continue to be regulated, for a period of 3 years after becoming such holding company, under the terms of section 10 of the Home Owners' Loan Act in the same manner and to the same extent and subject to the same requirements as by the Office of Thrift Supervision before the date of the enactment of the Thrift Charter Transition Act of 1997.

"(ii) HOLDING COMPANY CAPITAL EXCEPTION.—With regard to holding company capital, any company that qualifies under paragraph (2) and complies with paragraph (3) and was registered and regulated under section 10 of the Home Owners' Loan Act before June 19, 1997, or had an application pending to do so on such date, shall continue to be regulated under the terms of section 10 of the Home Owners' Loan Act in the same manner and to the same extent and subject to the same requirements as by the Office of Thrift Supervision before the date of the enactment of the Thrift Charter Transition Act of 1997.

"(iii) SUBMISSIONS TO REGULATORS.—A company shall provide for a period of 3 years after becoming a bank holding company described in paragraphs (2) and (3) the appropriate Federal banking agency with—

"(I) notice of acquisition of any company not controlled or affiliated on the date of enactment of the Thrift Charter Transition Act of 1997 that is engaged in nonbanking activities within 15 days after completion of any such transaction; and

"(II) copies of such quarterly and annual reports as it is otherwise required to file with any other governmental agency.

"(iv) REPORTING REQUIREMENTS.—The appropriate Federal banking agency may adopt, for a period of 3 years after a company becomes a bank holding company described in paragraphs (2) and (3), reporting requirements substantially similar to and no more burdensome than required by the Office of Thrift Supervision as of January 1, 1997.

"(v) REGULATORY AUTHORITY.—The appropriate Federal banking agency shall, for a period of 3 years after a company becomes a bank holding company described in paragraphs (2) and (3)—

"(I) have the same authority to examine a company or any subsidiary or affiliate thereof only to the same extent as the Office of Thrift Supervision had as of January 1, 1997; and

"(II) conduct only the same type of examination and with the same frequency as the Office of Thrift Supervision prior to January 1, 1997, unless required to prevent an unsafe or unsound activity or course of conduct of the savings institution converted to a bank pursuant to the Thrift Charter Transition Act of 1997.

"(7) OVERDRAFTS PROHIBITED.—A depository institution controlled by a company described in paragraph (2) may not permit any overdraft (including any intraday overdraft) on behalf of any affiliate (as defined in section 2 of the Bank Holding Company Act of 1956), or incur any such overdraft in such institution's account at a Federal reserve bank or Federal home loan bank on behalf of any affiliate.".

SEC. 417. TREATMENT OF REFERENCES IN ADJUSTABLE RATE MORTGAGES.

(a) TREATMENT OF REFERENCES IN ADJUSTABLE RATE MORTGAGES ISSUED BEFORE FIRREA.—For purposes of section 402(e) of Financial Institutions Reform, Recovery, and Enactment Act of 1989 (12 U.S.C. 1437 note), any reference in such section to—

(1) the Director of the Office of Thrift Supervision shall be deemed to be a reference to the Secretary of the Treasury; and

(2) a Savings Association Insurance Fund member shall be deemed to be a reference to an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act).

(b) TREATMENT OF REFERENCES IN ADJUSTABLE RATE MORTGAGES INSTRUMENTS ISSUED AFTER FIRREA.—

(1) IN GENERAL.—For purposes of adjustable rate mortgage instruments that are in effect as of the date of enactment of this Act, any reference in the instrument to the Director of the Office of Thrift Supervision or Savings Association Insurance Fund members shall be treated as a reference to the Secretary of the Treasury or insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), as appropriate.

(2) SUBSTITUTION FOR INDEXES.—If any index used to calculate the applicable interest rate on any adjustable rate mortgage instrument is no longer calculated and made available as a direct or indirect result of the enactment of this title, any index—

(A) made available by the Secretary of the Treasury; or

(B) determined by the Secretary of the Treasury, pursuant to paragraph (4), to be substantially similar to the index which is no longer calculated or made available,

may be substituted by the holder of any such adjustable rate mortgage instrument upon notice to the borrower.

(3) AGENCY ACTION REQUIRED TO PROVIDE CONTINUED AVAILABILITY OF INDEXES.—Promptly after the enactment of this subsection, the Secretary of the Treasury, the Chairperson of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency shall take such action as may be necessary to assure that the indexes prepared by the Director of the Office of Thrift Supervision immediately before the enactment of this subsection and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.

(4) REQUIREMENTS RELATING TO SUBSTITUTE INDEXES.—If any agency can no longer make available an index pursuant to paragraph (3), an index that is substantially similar to such index may be substituted for such index for purposes of paragraph (2) if the Secretary of the Treasury determines, after notice and opportunity for comment, that—

(A) the new index is based upon data substantially similar to that of the original index; and

(B) the substitution of the new index will result in an interest rate substantially similar to the rate in effect at the time the original index became unavailable.

SEC. 418. COST OF FUNDS INDEXES.

(a) COST OF FUNDS INDEX DEFINED.—The term "cost of funds indexed" means any index that is published by a Federal home loan bank and is based, in whole or in part, upon the cost of funds of such bank's members.

(b) CALCULATIONS BASED ON TYPE OF CHARTER AND INSURANCE FUND MEMBERSHIP OF MEMBERS.—If any cost of funds index includes data based on charter type, insurance fund membership, or other similar characteristics of members of a Federal home loan ban, such index shall be calculated after the date of the enactment of this Act using data only from insured depository institutions which were bank members and whose data was included in such index on or before such date of enactment.

(c) ACQUISITION OF DATA.—

(1) IN GENERAL.—Each insured depository institution the data from which is required to compile a cost of funds index in accordance with subsection (b) shall provide to the Federal home loan bank which maintains the index such information as may be necessary, and in such form as may be appropriate, for the bank to calculate and publish the index.

(2) ENFORCEMENT BY BANKING AGENCIES.—Each appropriate Federal banking agency shall take such action as may be necessary to ensure that insured depository institutions which are required to provide information to any Federal home loan bank under paragraph (1) furnish such information on a timely basis and in the form required by the bank.

(3) TREATMENT OF INSTITUTIONS.—Notwithstanding any other provision of law, an insured depository institution which furnishes information to a Federal home loan bank pursuant to this section for use in compiling a cost of funds index shall not be deemed to control, directly, or indirectly, such index.

(d) CERTAIN DATA EXCLUDED.—Notwithstanding subsections (b) and (c), no cost of funds index shall include any data from any insured depository institution which results from the merger, consolidation, or other combination of a member of a Federal home loan bank with a nonmember of any such bank if—

(1) the total assets of the nonmember exceed the total assets of the bank member at the time of such merger, consolidation, or other combination; or

(2) in the case of a merger, consolidation, or other merger in which a member of a Federal home loan bank is the resulting insured depository institution, combined ration of the average amount of single-family loan balances to average total assets of all insured depository institutions involved in such merger, consolidation, or other combination for the 12-months period ending on the date of such transaction is less than 70 percent.

(e) OTHER DEFINITIONS.—For purposes of this section, the terms "appropriate Federal banking agency" and "insured depository institution" shall have the same meanings as in section 3 of the Federal Deposit Insurance Act.

Subtitle B—Ending Separate Federal Regulation of Savings Associations and Savings and Loan Holding Companies

SEC. 421. STATE SAVINGS ASSOCIATIONS TREATED AS STATE BANKS UNDER FEDERAL BANKING LAW.

(a) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) by striking paragraph (2) of subsection (a) and inserting the following new paragraph:

"(2) STATE BANK.—

"(A) IN GENERAL.—The term 'State bank' means any bank, banking association, trust company, savings bank, industrial bank (or similar depository

institution which the Board of Directors finds to be operating in substantially the same manner as an industrial bank), building and loan association, savings and loan association, homestead association, cooperative bank, or other banking institution—

"(i) which is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

"(ii) which—

"(I) is incorporated under the laws of any State;

"(II) is organized and operating according to the laws of the State in which such institution is chartered or organized; or

"(III) is operating under the Code of Law for the District of Columbia (except a national bank).

"(B) CERTAIN INSURED BANKS INCLUDED.—The term 'State bank' includes any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(C) CERTAIN UNINSURED BANKS EXCLUDED.—The term 'State bank' shall not include any cooperative bank or other unincorporated bank the deposits of which were not insured by the Corporation on the day before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989."; and

(2) in subsection (q), by—

(A) inserting "and" after the semicolon at the end of paragraph (2);

(B) striking "; and" at the end of paragraph (3) and inserting a period; and

(C) striking paragraph (4).

(b) AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956.—Section 2(a)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)) is amended by striking subparagraph (E).

(c) EFFECTIVE DATE.—This section shall take effect 2 years after the date of the enactment of this Act.

SEC. 422. HOME OWNERS' LOAN ACT REPEALED.

Effective 2 years after the date of enactment of this Act, the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is repealed.

SEC. 423. CONFORMING AMENDMENT REFLECTING ELIMINATION OF THE FEDERAL THRIFT CHARTER AND THE SEPARATE SYSTEM OF THRIFT REGULATION.

Section 2704(c) of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 is amended to read as follows:

"(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the earlier of—

"(1) January 1, 2000; or

"(2) the end of the 2-year period beginning on the date of the enactment of the Thrift Charter Transition Act of 1997.".

SEC. 424. CONFORMING AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.

(a) AMENDMENT TO SECTION 2.—Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended by striking paragraph (9) and redesignating paragraphs (10), (11), and (12) as paragraphs (9), (10), and (11), respectively.

(b) AMENDMENTS TO SECTION 10.—Subsection (h) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended to read as follows:

"(h) [Repealed]".

(c) AMENDMENTS TO SECTION 11.—Section 11(e)(2)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1431(e)(2)(C)) is amended by—

(1) striking ", and with respect to the collection and settlement (including payment by the payor institution) of items payable by Federal savings and loan associations and Federal mutual savings banks,"; and

(2) striking ", associations, or banks".

(d) AMENDMENT TO SECTION 18.—Section 18(c) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)) is repealed.

(e) AMENDMENT TO SECTION 22.—Section 22(a) of the Federal Home Loan Bank Act (12 U.S.C. 1442(a)) is amended by striking ", and the Director of the Office of Thrift Supervision" each place such appears and inserting "and" before "the Chairperson of the National Credit Union Administration".

(f) AMENDMENT TO SECTION 24.—Section 24 of the Federal Home Loan Bank Act (12 U.S.C. 1444) is repealed.

(g) EFFECTIVE DATE.—This section shall become effective 2 years after the date of enactment of this Act.

SEC. 425. AMENDMENTS TO TITLE 11, UNITED STATES CODE.

(a) DEFINITION OF FEDERAL MUTUAL BANK HOLDING COMPANY.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (21B) the following new paragraph:

"(21C) 'Federal mutual bank holding company' has the same meaning as in section 5133B(h)(1) of the Revised Statutes of the United States.".

(b) CONSERVATOR OR RECEIVER MAY PETITION.—Section 303(b) of title 11, United States Code, is amended—

(1) in paragraph (3)(B) by striking "or" at the end;

(2) in paragraph (4) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(5) in a proceeding concerning a Federal mutual bank holding company, the Comptroller of the Currency."

(c) EFFECT OF INVOLUNTARY PETITION BY COMPTROLLER.—

(1) EXEMPTION FROM INDEMNIFICATION.—Section 303(e) of title 11, United States Code, is amended by inserting ", other than a petitioner specified in subsection (b)(5)," after "petitioners under this section".

(2) RESTRICTION ON OPERATION PENDING COURT ORDER OF RELIEF.—Section 303(f) of title 11, United States Code, is amended by inserting "or a petition was filed by a petitioner specified in subsection (b)(5)" after "otherwise".

(3) INTERIM TRUSTEE TO BE APPOINTED.—Section 303(g) of title 11, United States Code, is amended by inserting after the 1st sentence the following new sentence: "Upon the filing of a petition by a petitioner specified in subsection (b)(5), and without requiring notice or hearing, the United States Trustee shall appoint an interim trustee from a list submitted by the Comptroller of the Currency of 5 disinterested persons that are qualified and willing to serve."

Subtitle C—Combining OTS and OCC

SEC. 431. PROHIBITION OF MERGER OR CONSOLIDATION REPEALED.

Section 321 of title 31, United States Code, is amended by striking subsection (e).

SEC. 432. SECRETARY OF THE TREASURY REQUIRED TO FORMULATE PLANS FOR COMBINING OFFICE OF THRIFT SUPERVISION WITH OFFICE OF THE COMPTROLLER OF THE CURRENCY.

Not later than 9 months after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Director of the Office of Thrift Supervision and the Comptroller of the Currency, shall formulate a plan for consolidating the Office of Thrift Supervision with the Office of the Comptroller of the Currency by the end of the 2-year period beginning on the date of enactment of this Act. The Director of the Office of Thrift Supervision and the Comptroller of the Currency shall implement that plan, notwithstanding any other provision of Federal banking laws.

SEC. 433. OFFICE OF THRIFT SUPERVISION AND POSITION OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION ABOLISHED.

Effective 2 years after the date of enactment of this Act, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are abolished.

SEC. 434. RECONFIGURATION OF BOARD OF DIRECTORS OF FDIC AS A RESULT OF REMOVAL OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

(a) IN GENERAL.—Section 2(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended to read as follows:

"(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

"(A) 1 of whom shall be the Comptroller of the Currency; and

"(B) 4 of whom shall be appointed by the President, and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 2(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1812(d)(2)) is amended—

(A) by striking "or the office of Director of the Office of Thrift Supervision";

(B) by striking "or such Director";

(C) by striking "or the acting Director of the Office of Thrift Supervision, as the case may be"; and

(D) by striking "or Director".

(2) Section 2(f)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1812(f)(2)) is amended by striking "or of the Office of Thrift Supervision".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect at the end of the 2-year period beginning on the date of the enactment of this Act.

SEC. 435. CONTINUATION PROVISIONS.

(a) CONTINUATION OF ORDERS, RESOLUTIONS, DETERMINATIONS AND REGULATIONS.—All orders, resolutions, determinations and regulations of the Office of Thrift Supervision that have been issued, made, prescribed or allowed to become effective by the Office of Thrift Supervision (including orders, resolutions, determinations and regulations that relate to the conduct of conservatorship and receiverships), or by a court of competent jurisdiction, and are in effect on the day before the date of enactment, shall continue in effect according to the terms of such orders, resolutions, determinations, and regulations and shall be enforceable by or against the appropriate successor agency until modified, terminated, set aside or superseded in accordance with applicable law by the appropriate successor agency or by a court of competent jurisdiction or by operation of law.

(b) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Office of Thrift Supervision shall abate because of the enactment of this Act, except that the appropriate successor agency to the Office of Thrift Supervision shall be substituted for the Office of Thrift Supervision as a party to any such action or proceeding.

(c) CONTINUATION OF AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to such agency, department, or instrumentality, that was providing supporting services to the Office of Thrift Supervision shall—

(1) continue to provide such services, on a reimbursable basis or as otherwise agreed before the date of enactment, to the Office of Thrift Supervision; and

(2) consult with the Office of Thrift Supervision to coordinate and facilitate a prompt and reasonable completion or termination of such services.

(d) TRANSFER OF PROPERTY.—Not later than two years of the date of enactment, all property of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency, or another appropriate successor agency, in accordance with the division of responsibilities and activities effected by this Act. For purposes of this subsection, the term "property" includes, but is not limited to, all interests in real property and all personal property, including financial assets, computer hardware and software, furniture, fixtures, books, accounts, records, reports of examination, work papers and correspondence related to such reports of examination, and any information, materials, property, and assets not specifically listed. The Secretary of the Treasury shall resolve any disagreement between successor agencies.

Subtitle D—Technical and Conforming Amendments to the Depository Institution Statutes

SEC. 441. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) AMENDMENT TO SECTION 1.—Section 1(a) of the Federal Deposit Insurance Act (12 U.S.C. 1811(a)) is amended by striking "and savings associations".

(b) AMENDMENTS TO SECTION 3.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (b)—

(A) by striking subparagraph (A) of paragraph (1);

(B) by striking "and the Director of the Office of Thrift Supervision jointly determine" in paragraph (1)(C) and inserting "determines";

(C) by redesignating subparagraphs (B) and (C) of paragraph (1) (as amended by subparagraph (B) of this paragraph) as subparagraphs (A) and (B), respectively;

(D) by striking paragraph (2); and

(E) by redesignating paragraph (3) as paragraph (2);

(2) in subsection (l)(5)—

(A) by striking "or savings association" each place such term appears; and

(B) by striking "Director of the Office of Thrift Supervision"; and

(3) in subsection (z), by striking "the Director of the Office of Thrift Supervision,".

(c) AMENDMENT TO SECTION 4.—Section 4(a) of the Federal Deposit Insurance Act (12 U.S.C. 1814(a)) is amended—

(1) by striking "(1) BANKS.—"; and

(2) by striking paragraph (2).

(d) AMENDMENTS TO SECTION 7.—Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

(1) in subsection (a)(2)(A), by striking "the Director of the Office of Thrift Supervision,";

(2) in subsection (a)(2)(B)—

(A) by inserting "and" after "Comptroller of the Currency,"; and

(B) by striking "and the Director of the Office of Thrift Supervision,";

(3) in subsection (a)(3)—

(A) by inserting "and" after "Comptroller of the Currency,"; and

(B) by striking ", and the Director of the Office of Thrift Supervision";

(4) in subsection (a)(7), by striking "the Director of the Office of Thrift Supervision," ; and

(5) by striking subsection (n).

(e) AMENDMENTS TO SECTION 8.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(1) in paragraph (7) (as so redesignated by section 136(c)(1)(B) of this Act) of subsection (a)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraphs (C) through (H) as subparagraphs (B) through (G), respectively;

(2) in subsection (b)—

(A) by striking paragraph (9); and

(B) by redesignating paragraph (10) as paragraph (9);

(3) in subsection (o), by striking the last sentence; and

(4) in subsection (w)(3)(A), by striking "and the Office of Thrift Supervision, where appropriate".

(f) AMENDMENT TO SECTION 10.—Section 10(c) of the Federal Deposit Insurance Act (12 U.S.C. 1820(c)) is amended by striking "savings association,".

(g) AMENDMENTS TO SECTION 11.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) in subsection (c)—

(A) by striking paragraph (6); and

(B) by redesignating paragraphs (7) through (13) as paragraphs (6) through (12), respectively;

(2) in subsection (d)(2)(F), by striking "receiver—" and all that follows through "(ii) with" and inserting "receiver with";

(3) in subsection (d)(17)(A), by striking "or the Director of the Office of Thrift Supervision"; and

(4) in subsection (d)(18)(B), by striking "or the Director of the Office of Thrift Supervision".

(h) AMENDMENT TO SECTION 13.—Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by striking subsection (k).

(i) AMENDMENTS TO SECTION 18.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—

(1) in subsection (c)(2)—

(A) by inserting "and" after the semicolon at the end of subparagraph (B);

(B) in subparagraph (C), by striking "(except a District bank or a savings bank supervised by the Director of the Office of Thrift Supervision); and" and inserting "(except a District bank)."; and

(C) by striking subparagraph (D);

(2) in subsection (g)(1), by striking "and the Director of the Office of Thrift Supervision";

(3) in subsection (i)(2)—

(A) by inserting "and" after the semicolon at the end of subparagraph (B);

(B) by striking "; and" in subparagraph (C) and inserting a period; and

(C) by striking subparagraph (D); and

(4) by striking subsection (m).

(j) AMENDMENTS TO SECTION 22.—Section 22 of the Federal Deposit Insurance Act (12 U.S.C. 1830) is amended—

(1) by striking "or State savings associations and in favor of national or member banks or Federal savings associations, respectively" and inserting "and in favor of national or member banks"; and

(2) by striking "and savings associations".

(k) AMENDMENT TO SECTION 28.—Section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is repealed.

(l) AMENDMENT TO SECTION 33.—Section 33(e) of the Federal Deposit Insurance Act (12 U.S.C. 1831j(e)) is amended by striking ", and the Director of the Office of Thrift Supervision" and inserting "and" before "the Comptroller of the Currency".

(m) AMENDMENT TO SECTION 38.—Section 38(o) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(o)) is repealed.

SEC. 442. AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956.

Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by striking subsections (i) and (j) and inserting the following new subsections:

"(i) [Repealed]

"(j) [Repealed]".

SEC. 443. AMENDMENTS TO THE FEDERAL RESERVE ACT.

(a) AMENDMENTS TO SECTION 11.—Section 11(a)(2)(B) of the Federal Reserve Act (12 U.S.C. 248(a)(2)(B)) is amended—

(1) by inserting "and" after the comma at the end of clause (ii);

(2) by striking clause (iii); and

(3) by redesignating clause (iv) as clause (iii).

(b) AMENDMENTS TO SECTION 19.—Section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)) is amended—

(1) in paragraph (1)(A)—

(A) by inserting "and" after the semicolon at the end of clause (v);

(B) by striking clause (vi); and

(C) by redesignating clause (vii) as clause (vi); and

(2) by striking "the Director of the Office of Thrift Supervision," each place it appears.

SEC. 444. AMENDMENTS TO ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

Section 804(a) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803) is amended—

(1) in paragraph (1)—

(A) by inserting "(as such term is defined in section 3 of the Federal Deposit Insurance Act) and all other housing creditors" after "with respect to banks"; and

(B) by inserting "and" after the semicolon at the end of the paragraph;

(2) by deleting "; and" at the end of paragraph (2) and inserting a period; and

(3) by striking paragraph (3).

SEC. 445. AMENDMENTS TO THE BANK PROTECTION ACT OF 1968.

Section 2 of the Bank Protection Act of 1968 (12 U.S.C. 1881) is amended—

(1) by striking the comma at the end of paragraph (2) and inserting "; and";

(2) by striking ", and" at the end of paragraph (3) and inserting a period; and

(3) by striking paragraph (4).

SEC. 446. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.

Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended—

(1) in paragraph (1)—

(A) by inserting "and" after the semicolon at the end of subparagraph (B); and

(B) by striking "and" after the semicolon at the end of subparagraph (C);

(2) by striking the first paragraph (2); and

(3) in paragraph (3)(A), by striking "or Federal savings and loan association".

SEC. 447. AMENDMENTS TO THE DEPOSITORY INSTITUTIONS DEREGULATION AND MONETARY CONTROL ACT OF 1980.

Section 208(a) of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. 3507(a)) is amended—

(1) by striking "; and" at the end of paragraph (1)(C) and inserting a period; and

(2) by striking paragraph (2).

SEC. 448. AMENDMENTS TO THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

(a) AMENDMENT TO SECTION 202.—Section 202(2) of the Depository Institution Management Interlocks Act (12 U.S.C. 3201(2)) is amended by inserting "or" before "a company which would be" and striking ", or a savings and loan holding company" and all that follows through "Housing Act".

(b) AMENDMENT TO SECTION 205.—Section 205 of the Depository Institution Management Interlocks Act (12 U.S.C. 3204) is amended—

(1) in the portion of paragraph (8)(A) which precedes clause (i), by striking "diversified savings" and all that follows through "with respect to" and inserting "company which is, or has filed an application to become, a depository institution holding company and which satisfies the consolidated net worth and consolidated net earnings requirements for a diversified savings and loan holding company (as set forth in section 10(1)(F) of the Home Owners' Loan Act, as such section is in effect and interpreted on such date, which shall be applicable for purposes of this paragraph without regard to the fact that a depository institution subsidiary of such holding company has ceased to be a savings association after January 1, 1997) with respect to"; and

(2) by striking paragraph (9).

(c) AMENDMENTS TO SECTION 207.—Section 207 of the Depository Institution Management Interlocks Act (12 U.S.C. 3206) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(d) AMENDMENT TO SECTION 209.—Section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207) is amended—

(1) by inserting "and" after the comma at the end of paragraph (3);

(2) by striking paragraph (4); and

(3) by redesignating paragraph (5) as paragraph (4).

SEC. 449. AMENDMENT TO THE ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT OF 1996.

Section 2227 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Public Law 104–208) is amended by striking "the Director of the Office of Thrift Supervision,".

SEC. 450. AMENDMENT TO THE EMERGENCY HOME FINANCE ACT OF 1970.

Section 305(b) of the Emergency Home Finance Act of 1970 (12 U.S.C. 1454(b)) is amended by striking "any Federal savings and loan association,".

SEC. 451. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

Section 610(a) of the Expedited Funds Availability Act (12 U.S.C. 4009(a)) is amended—

(1) by inserting "and" after the semicolon at the end of paragraph (1)(C);

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

SEC. 452. AMENDMENTS TO THE FEDERAL CREDIT UNION ACT.

(a) AMENDMENT TO SECTION 107.—Section 107(7)(D) of the Federal Credit Union Act (12 U.S.C. 1757(7)(D)) is amended by striking "the Federal Savings and Loan Insurance Corporation or".

(b) AMENDMENT TO SECTION 206.—Section 206(g)(7)(A)(ii) of the Federal Credit Union Act (12 U.S.C. 1786(g)(7)(A)(ii)) is amended by striking ", or as a savings association under section 8(b)(8) of such Act".

SEC. 453. AMENDMENTS TO THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.

(a) AMENDMENT TO SECTION 1003(1).—Section 1003(1) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302(1)) is amended by striking "the Office of Thrift Supervision,".

(b) AMENDMENT TO SECTION 1004.—Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended—

(1) by inserting "and" after the comma at the end of paragraph (3);

(2) by striking paragraph (4); and

(3) by redesignating paragraph (5) as paragraph (4).

SEC. 454. AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.

(a) AMENDMENT TO SECTION 1121.—Section 1121(6) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(6)) is amended by striking "the Office of Thrift Supervision,".

(b) AMENDMENT TO SECTION 1206.—Section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) is amended by striking "and the Office of Thrift Supervision," and inserting "and" before "the Farm Credit Administration".

(c) AMENDMENT TO SECTION 1216.—Section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e) is amended—

(1) in subsection (a), by striking paragraph (2) and redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively; and

(2) in subsection (c), by striking "the Director of the Office of Thrift Supervision,".

SEC. 455. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT OF 1975.

(a) AMENDMENTS TO SECTION 304.—Section 304(h) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is amended—

(1) by striking paragraph (2);

(2) in paragraph (5), by striking "(4)" and inserting "(3)"; and

(3) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively.

(b) AMENDMENTS TO SECTION 305.—Section 305(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804(b)) is amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(c) AMENDMENTS TO SECTION 306.—Section 306(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b)) is amended by striking "shall be enforced under—" and all that follows through "Federal Deposit Insurance Corporation" and inserting "under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the case of national banks, by the Comptroller of the Currency".

SEC. 456. AMENDMENTS TO THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.

(a) AMENDMENT TO SECTION 1315.—Section 1315(b) of the Housing and Community Development Act of 1992 (12 U.S.C. 4515(b)) is amended by striking ", and the Office of Thrift Supervision" and inserting "and" before "the Federal Deposit Insurance Corporation".

(b) AMENDMENT TO SECTION 1317(c).—Section 1317(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4517(c)) is amended by striking ", or the Director of the Office of Thrift Supervision" and inserting "or" before "the Federal Deposit Insurance Corporation".

SEC. 457. AMENDMENT TO THE INTERNATIONAL BANKING ACT OF 1978.

Section 15 of the International Banking Act of 1978 (12 U.S.C. 3109) is amended by striking "Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision" each place that it appears and inserting "and Federal Deposit Insurance Corporation".

SEC. 458. AMENDMENTS TO THE NATIONAL HOUSING ACT.

(a) AMENDMENTS TO SECTION 203.—The 1st of the 2 subsections designated as subsection (s) of section 203 of the National Housing Act (12 U.S.C. 1709(s)) is amended—

(1) by inserting "and" after the semicolon at the end of paragraph (6);

(2) in paragraph (7)—

(A) by inserting "(as defined in section 3 of the Federal Deposit Insurance Act)" after "State bank"; and

(B) striking "; and" and inserting a period; and

(3) by striking paragraph (8).

(b) AMENDMENT TO SECTION 502.—Section 502 of the National Housing Act (12 U.S.C. 1701c(c)) is amended by striking "and the Director of the Office of Thrift Supervision, respectively".

SEC. 459. AMENDMENT TO PUBLIC LAW 93–495.

Section 202(a)(12) of Public Law 93–495 (12 U.S.C. 2402(a)(12)) is amended by striking "thrift, or other business entities, including one representative each of commercial banks, mutual savings banks, savings and loan associations," and inserting "or other business entities, including 3 representatives from different types of insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) and 1 representative each of".

SEC. 460. AMENDMENT TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

The 1st sentence of section 4(a) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2603(a)) is amended—

(1) by striking the comma after "Affairs";

(2) by inserting "and" before "the Federal Deposit Insurance Corporation"; and

(3) by striking ", and the Director of the Office of Thrift Supervision".

SEC. 461. AMENDMENT TO THE REVISED STATUTES OF THE UNITED STATES.

Section 324 of the Revised Statutes of the United States (12 U.S.C. 1) is amended by striking "The Comptroller of the Currency shall have the same authority over matters within the jurisdiction of the Comptroller as the Director of the Office of Thrift Supervision has over matters within the Director's jurisdiction under section 3(b)(3) of the Home Owners' Loan Act" and inserting "The Secretary of the Treasury may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions) unless otherwise specifically provided by law".

SEC. 462. AMENDMENTS TO THE RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.

(a) AMENDMENT TO SECTION 307.—Section 307(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4805(a)) is amended by striking "savings association financial reports,".

(b) AMENDMENT TO SECTION 117.—Section 117(e) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4716(e)) is amended by striking "the Director of the Office of Thrift Supervision,".

SEC. 463. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

(1) in paragraph (6)—

(A) by inserting "and" after the semicolon at the end of subparagraph (A);

(B) by striking "; and" at the end of subparagraph (B) and inserting a period; and

(C) by striking subparagraph (C); and

(2) in paragraph (7)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraphs (C) through (H) as subparagraphs (B) through (G), respectively.

SEC. 464. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

Section 270(a)(1) of the Truth in Savings Act (12 U.S.C. 4309(a)(1)) is amended—

(1) by inserting "and" after the semicolon at the end of subparagraph (A);

(2) in subparagraph (B)—

(A) by striking "or (iii)" and inserting "(iii), or (v)"; and

(B) by striking "; and" and inserting a period; and

(3) by striking subparagraph (C).

SEC. 465. EFFECTIVE DATE.

This subtitle shall take effect at the end of the 2-year period beginning on the date of the enactment of this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 10, the Financial Services Act of 1997 (the Act), as reported by the Committee on Commerce, is to establish a comprehensive framework to permit affiliations among securities firms, insurance companies, commercial banks, and, subject to certain limitations, commercial enterprises. The primary objective of allowing such affiliations is to enhance consumer choice in the financial services marketplace, eliminate anti-competitive regulatory disparities among financial services providers, and increase competition among providers of financial services. This legislation seeks to help participants in the financial services marketplace to realize the cost savings, efficiency, and other benefits resulting from increased competition. The Act is also designed to improve the international competitiveness of U.S. companies, which may have been constrained by the barriers to affiliation that exist pursuant to certain sections of the Banking Act of 1933, commonly referred to as the Glass-Steagall Act. (Sections 16, 20, 21, and 32 of the Banking Act of 1933 are referred to as the "Glass-Steagall Act.")

The Act provides for a number of prudential safeguards designed to protect investors, avoid risk to the Federal deposit insurance funds, protect the safety and soundness of insured depository institutions and the Federal payments system, and protect consumers.

TITLE I

Title I repeals the anti-affiliation provisions of the Glass-Steagall Act (Section 20 and Section 32 of the Banking Act of 1933). It also sets up a new structure, different from that in the Bank Holding Company Act of 1956, permitting affiliation among securities firms, insurance companies, and banks. This structure is designed to promote efficiency and competition and to protect investors and consumers.

The Committee found that a structure based on a financial services holding company was the most beneficial to the goals of efficiency, competition, and protection of investors and consumers. Specifically, requiring that securities and insurance underwriting activities be conducted in separately capitalized affiliates in a holding company structure creates obstacles to the migration of taxpayer subsidized funds in banks to finance activities in these affiliates. The Committee does not wish to expand unnecessarily the reach of the Federal safety net. It has, therefore, opted for a structure based on affiliation in a financial services holding company rather than one based on granting powers to direct subsidiaries of insured depository institutions.

Title I preempts State laws that prevent affiliation among financial services providers. In addition, the title prevents the States from significantly interfering in the ability of national banks or wholesale financial institutions to engage in activities authorized under Sections 6 and 10 of the Bank Holding Company Act or Section 17(i) of the Securities Exchange Act of 1934. Although the Committee intends the new subsection (c)(2) of Section 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846) to be parallel to the analysis of the United States Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson,* 116 S.Ct. 1103 (1996), it does not intend, by implication or otherwise, to expand or narrow the scope of the *Barnett* ruling.

Title I also expressly limits the authority of the Board of Governors of the Federal Reserve System (Federal Reserve Board) over the affiliates of financial services holding companies. These limitations are designed to facilitate functional regulation of the operative components of a financial services holding company. Specifically, the preeminent authority of the Securities and Exchange Commission (SEC or Commission) and the State insurance regulators over securities firms and the business of insurance, respectively, is preserved.

Title I also grants to State insurance commissioners and the SEC the authority to prevent the Federal Reserve Board from compelling the insurance and securities subsidiaries of a financial holding company to provide funds to any undercapitalized insured depository institution. This provision makes clear that the source of strength doctrine does not extend to securities firms and insurance companies affiliated with banks.

Title I specifically limits the activities of national bank subsidiaries to those activities a national bank is authorized to engage in directly. Title I also specifically authorizes national bank subsidiaries to engage in insurance sales. The Comptroller of the Currency (OCC or the Comptroller) has proposed interpretative changes to Part 5 of the National Bank Act that the Committee found: (1) exceed the Comptroller's statutory authority; and (2) are bad public policy. The Committee intends that this provision prevent future unauthorized actions by the Comptroller.

Title I sets up a structure for supervision of investment bank holding companies, and creates a new depository institution, a Wholesale Financial Institution (WFI), which investment bank holding companies may own. Because WFIs do not take retail deposits or have Federal deposit insurance, their holding companies do not require as extensive regulatory oversight as do financial holding companies that own insured banks. The Committee has set up a supervisory structure in which either the SEC or the Federal Reserve Board may be the holding company regulator for investment bank holding companies.

Title I provides for limited affiliations between banking and commercial activities. It permits financial holding companies to engage in activities, or own entities engaged in activities, that are not "financial in nature" to the extent of the lesser of five percent of the holding company's gross worldwide revenues or $500 million, subject to a limitation that no bank holding company may purchase a non-financial firm with assets of over $750 million. In addition, the title includes a grandfather provision that permits financial holding companies to retain all non-financial activities and affiliates, subject to no limitation on future growth, so long as the financial holding company derived at least 85 percent of its gross worldwide revenues from financial activities at the time it became a financial holding company. These provisions are designed to provide financial holding companies that own insured banks with the flexibility to not only maintain and grow non-financial activities in which they may be engaged, but also to develop new such activities, without providing for such a broad mixture of banking and commercial activities that it would create a risk to the safety and soundness of the U.S. banking system or create undue concentration of service providers and limit competition. The title provides a similar grandfather provision applicable to WFIs. Title I also allows these entities to directly or indirectly acquire or control shares, assets, or ownership interests in commercial concerns without limit for the purpose of appreciation and ultimate resale by expressly including "merchant banking" in the definition of activities that are "financial in nature."

With further respect to activities that are included as "financial in nature," the term "providing financial, investment or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940)" is intended to include all activities that are necessary or incidental to the business or operation of an investment company or an investment adviser registered under the Investment Advisors Act of 1940, including the provision of personnel to an investment company or to a company that provides products or services to an in-

vestment company, as well as money management and investment management services and related activities for other clients. It is the Committee's intention that these activities be deemed financial in nature, regardless of whether they are conducted separately or in combination with other activities, and regardless of whether they are conducted in accordance with limitations imposed by the Federal Reserve Board prior to the enactment of this Act. The term, thus, includes, for example, such activities as acting as the sponsor, organizer, distributor, principal underwriter, sales agent, broker, dealer, placement agent, administrator, transfer agent, registrar, shareholder servicing agent, dividend disbursement agent, custodian, investment adviser or sub-investment adviser of an investment company, or controlling an investment company.

TITLE II

Subtitle A of Title II of the Act amends the Federal securities laws in order to provide functional regulation of bank securities activities. The Act repeals the exemptions under the Federal securities laws that currently apply to banks, subjecting banks and their affiliates and subsidiaries to the same regulation as all other providers of securities products.

H.R. 10, as reported by the Banking Committee, also eliminated the blanket exceptions for banks from the definitions of "broker" and "dealer," but included sixteen new exceptions for activities in which banks could engage without being subject to broker-dealer regulation under the Federal securities laws. The breadth of the exceptions in the Banking Committee's bill would have had the effect of permitting banks to continue to engage in extensive securities activities, without being subject to the securities laws that apply to their broker-dealer competitors engaged in the same activities.

However, the Committee concluded that, with modifications that (i) address competitiveness concerns, (ii) address market integrity issues, and (iii) minimize the risks to investors, particularly individuals, many of the areas exempt in the Banking Committee bill could be appropriately excepted from securities regulation.

Accordingly, the Committee provided for a number of exceptions that permit banks to engage in certain securities activities that have traditionally been provided by banks, subject to certain limitations, without becoming subject to the Federal securities laws. These exceptions relate to third-party networking arrangements, trust activities, traditional banking transactions such as commercial paper and exempted securities, employee and shareholder benefit plans, sweep accounts, affiliate transactions, private placements, safekeeping and custody services, asset-backed securities, and derivatives.

Banks today also engage in a wide range of investment advisory activities that are comparable to, and competitive with, the services of other investment advisers. Banks that advise mutual funds, however, are not currently required to register as investment advisers under the Investment Advisers Act of 1940 and, therefore, are not subject to the same securities regulatory scheme that applies to other entities that advise mutual funds. The Committee believes that existing banking regulation does not adequately address

the investor protection concerns that are raised by bank involvement in mutual fund activities. Subtitle B amends the Investment Advisers Act to subject banks that advise mutual funds to the same regulatory scheme as other advisers to mutual funds. Subtitle B also addresses specific conflicts of interest that may arise when banks advise mutual funds.

Subtitle B broadens the definition of "investment adviser" in the Investment Advisers Act to include banks that advise mutual funds. This amendment ensures that all mutual fund advisers are subject to the same rules. The current exclusion for banks under the Investment Advisers Act, like the exclusions for banks under the Securities Act of 1933 and the Securities Exchange Act of 1934 (the Exchange Act), is a holdover from a time when it was assumed that banks could not engage in securities-related activities. That assumption is no longer valid, and the Committee believes that corrective legislation is essential. Excluding banks from the definition of "investment adviser" hampers effective Commission oversight of bank-advised mutual funds because Commission examiners do not have access to all of the books and records normally available when they examine a mutual fund whose adviser is registered with the Commission. Requiring banks that advise mutual funds to register under the Investment Advisers Act provides the Commission with the authority it needs to oversee the activities of these advisers, and provides investors in bank-advised mutual funds with the same protections enjoyed by other mutual fund investors.

Although the Investment Company Act and the Investment Advisers Act currently restrict transactions between mutual funds and their affiliates, the statutes do not address specifically all of the concerns that may exist when banks provide investment management and related services to funds. Because banks advising mutual funds may be subject to particular conflicts of interest because of the nature of their other activities, H.R. 10 provides the Commission with additional authority to address special conflicts of interest that may exist when a bank and the mutual fund it advises do business with each other. These conflicts may arise, for example, when a bank loans money to a fund it advises, acts as the fund's custodian, or holds the fund's shares in a fiduciary capacity. Another area of concern involves the potential investor confusion that may be created when a bank advises a mutual fund or sells fund shares on bank premises. Because the federal government insures bank deposits, it is possible that some investors may mistakenly believe that a mutual fund advised by a bank or sold on bank premises also is insured. The bill addresses this concern by requiring banks to disclose, in this situation, that an investment in the fund is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other government agency. Because the Committee believes that the potential for investor confusion about whether a mutual fund investment is insured by the government exists only where those funds are sold through, or advised by a bank, H.R. 10 applies this disclosure obligation only to such funds, and not to funds that are not sold through or advised by a bank.

The bill grants the Commission authority to address concerns that arise when banks advise or sell mutual funds. This authority is not intended to subject bank advisers to more regulation than

other fund advisers, but rather is intended to provide the Commission with the flexibility to effectively address problems particular to mutual funds that are advised by a bank or sold on bank premises.

Subtitle C creates a new investment bank holding company structure under the Securities Exchange Act. This subtitle is designed to implement a new concept of SEC supervision of holding companies with small affiliated WFIs that are substantially engaged in the securities business. These investment bank holding companies are authorized to engage in a wide range of "financial activities," to continue existing commercial activities, to engage in a limited amount of new commercial activities, and to engage in a limited amount of "developing" activities and commodities activities. (These investment bank holding companies alternatively may elect Federal Reserve Board supervision.) The Committee has determined that this regulatory structure is needed because these companies are primarily engaged in the securities business and are not affiliated with an insured bank. The Committee also has determined that this regulatory structure is consistent with functional regulation, in that it provides a supervisory structure in which the SEC is the supervisory regulator for investment bank holding companies substantially engaged in the securities business.

Moreover, broker-dealer holding companies that do not have affiliated WFIs may voluntarily elect SEC supervision as an investment bank holding company under Subtitle C. Under this voluntary supervision, the SEC will have greater authority to oversee the entire entity, thus satisfying the expectations of foreign jurisdictions and some financial counterparties that the entity be subject to consolidated supervision. This provision is designed to improve the competitiveness of U.S. investment bank holding companies that do business in foreign jurisdictions that require consolidated holding company supervision for securities firms. Investment bank holding companies with no affiliated WFIs that voluntarily "opt" into this investment bank holding company supervisory scheme will remain free to engage in—or affiliate with entities engaged in—unlimited commercial activities.

TITLE III

Title III pertains to the regulation of insurance. Subtitle A provides guidelines for the regulation of insurance activities, particularly those of national banks, and sets forth appropriate standards for judicial review of regulatory insurance disputes. These provisions were drafted after numerous hearings in which the Committee found that there were significant questions regarding which regulators had the responsibility to regulate the insurance activities of Federally chartered entities, and serious questions were raised about the applicability and enforcement of consumer protections in the underwriting and sale of insurance by various financial entities.

Subtitle A specifically provides for the functional regulation of insurance. The Committee's purpose in the first part of Subtitle A is to reaffirm the McCarran-Ferguson Act and require State licensing for insurance activities. The Committee further requires functional regulation of insurance, although it does not intend to alter or af-

fect the ruling of the United States Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson,* 116 S.Ct. 1103 (1996).

Subtitle A prohibits national banks and their subsidiaries from underwriting insurance, except for products that they are currently providing or authorized to provide. A definition of insurance versus banking products is created, based on State insurance codes and referencing sections from the Internal Revenue Code which determine whether a product is treated as insurance for tax purposes, with carve-outs for core banking products.

The Committee is concerned about de novo bank insurance sales activity in a State, and accordingly requires national banks and their subsidiaries that are initiating a new insurance agency activity in a State to acquire an existing agency that has been licensed for at least two years in such State to ensure a minimum level of expertise and understanding of local State insurance laws and regulations.

The Committee heard conflicting views from witnesses on the propriety of allowing banks to underwrite and sell title insurance. In particular, concerns were raised about conflicts of interest, consumer confusion, and unfair competition, in contrast to conflicting testimony about the need to increase competition, provide more availability for consumers, and the synergies created between a bank's mortgage or loan functions and title insurance activities. Not wanting to push banks out of business they are currently engaged in, the Committee in Subtitle A grandfathered title insurance activities for national banks, unless such bank has an insurance affiliate or subsidiary engaged in insurance underwriting (in which case a push-out into the affiliate or subsidiary is required). However, in States that have authorized their State banks to sell title insurance, the Committee desired not to disadvantage national banks competitively, and thus grants them parity powers to the same manner and extent authorized for State banks as of January 1, 1997.

To address concerns that the insurance industry was placed at a competitive disadvantage versus national banks in terms of the regulatory tensions between Federal banking and State insurance regulators, Subtitle A includes an expedited and equalized dispute resolution procedure. Such inter-regulatory conflicts would be brought to and decided by a United States District Court within an expedited time frame, with the courts directed to look at the merits of the questions presented, under both State and Federal law, including the nature and history of a product and its regulation, without unequal deference. This provision helps create an even playing field, on the merits, for inter-industry disputes.

Subtitle A also codifies a modified version of guidelines drafted by the Federal banking regulators, to ensure a minimum level of consumer protection for bank insurance customers, including requirements for: anti-coercion rules (prohibiting banks from misleading consumers into believing that an extension of credit is conditional upon the purchase of insurance); easily understandable disclosures as to whether a product is FDIC insured; an appropriate delineation of the settings and circumstances under which insurance sales should be physically segregated from bank loan and teller activities; standards limiting compensation systems for

insurance referrals by bank tellers or loan personnel; proper licensing and qualification of bank insurance personnel; prohibitions on insurance discrimination against victims of domestic violence; and establishment of a consumer grievance process to address consumer complaints.

In order to complete the repeal of anti-affiliation provisions begun in Title I that prevent financial companies from integrating and fully competing with each other, Subtitle A of Title III preempts State laws that prohibit insurance companies from affiliating in a financial holding company or from buying or investing in a bank.

During the Committee's consideration of financial services reform, concerns were raised regarding the financial stability of mutual insurance companies following reform of Glass-Steagall, particularly if the State of domicile of the mutual insurance company did not have a statute or regulation allowing such company to reorganize into a mutual holding company. The last provision in Subtitle A of Title III protects the reorganization of a mutual insurance company in a State which has an enabling statute, applying against States (other than the insurer's domicile) that may try to prevent or restrict such reorganization, either directly or indirectly through a formal review or approval requirement.

Subtitle B of Title III allows for redomestication and reorganization of mutual insurance companies domiciled in States which do not have enabling reorganization laws or regulations for mutual holding companies. The Committee's purpose in this Subtitle is to avoid preempting reasonable State laws which allow such reorganizations, and only apply Federal procedures to those States that are silent on the issue. To allow such a reorganization to be reasonably effected, the Committee has directed that all company licenses be preserved and all policies and forms remain in force during the transition, and that laws in such States (other than those of the transferee State domicile) which discriminate or otherwise impede the reorganization are preempted. To take advantage of these provisions, a redomesticating and reorganizing mutual insurer must present a plan to the State insurance regulator of the transferee State, and such regulator must affirmatively determine that the plan includes requirements for: a majority vote of policyholders and the board of directors after reasonable notice and disclosure; a transfer of equivalent voting and contractual rights in the new holding company parent; certain limits on initial public stock offerings; and awards of stock options to elected officers and directors. The insurance regulator of the transferee domicile must also determine that the reorganization is fair and equitable to the company's policyholders.

Subtitle C of Title III requires uniform licensing of insurance agents and brokers. The Committee received lengthy hearing testimony that many States imposed brokerage licensing requirements that did not appear to serve a pro-competitive or consumer protection purpose, and which made the placement of insurance on a multi-state basis prohibitively expensive. Questions were raised to the Committee, for example, as to what purpose is served by requiring multiple continuing education requirements in numerous States when the material learned may be largely duplicative.

Subtitle C first allows the States an opportunity to establish uniform or reciprocal licensing and continuing eligibility requirements independently without further Federal imposition. If such uniformity or reciprocity is not achieved within three years, then the National Association of Insurance Commissioners (NAIC) is directed to establish the National Association of Agents and Brokers (NARAB) under its supervision. The NARAB shall be a private, non-profit corporation, which shall establish national uniform licensing qualifications and continuing education requirements that would preempt State licensing standards for NARAB's members.

A broker whose license has been suspended or revoked by a State is ineligible for NARAB membership for three years, and NARAB members shall remit to the States the appropriate fees for license renewal. The NARAB shall establish an Office of Consumer Complaints to investigate consumer problems and recommend disciplinary actions for members, referring such complaints to State insurance regulators where appropriate. The NARAB's board shall be appointed by the NAIC, and the NARAB's bylaws and any rules are subject to disapproval by the NAIC. State laws which discriminate against NARAB's members based on residency are preempted, as are State laws requiring additional licensing requirements for NARAB members, except for State unfair trade practices, consumer protection laws, and counter-signature requirements. If the NAIC does not implement the NARAB, and the States do not meet the uniformity and reciprocity requirements, then the NARAB shall be created and supervised by the President, with its board members subject to the advice and consent of the Senate.

TITLE IV

Title IV effectuates the merger of the banking and thrift charters. This merger is a prerequisite to the merger of the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF), pursuant to the Deposit Insurance Funds Act of 1996. The Committee had concerns with respect to this title, including the grandfather provisions, as reported by the Banking Committee. In order to provide converting thrifts with the greatest flexibility possible, while limiting the potential for risk to the safety and soundness of the banking system, and the potential for competitive unfairness among financial services providers, the Committee approved an amendment that expanded the "grandfather" provisions in the title as adopted by the Subcommittee on Finance and Hazardous Materials. Pursuant to that amendment, the grandfather provisions permit a savings and loan holding company that was such a holding company or had filed an application to become such a holding company as of September 16, 1997, to maintain or enter into any non-bank affiliation and to engage in any activity, including holding any asset, that was permissible pursuant to the Home Owners' Loan Act (HOLA) as of the day before the date of enactment of the Act.

Because these expansive grandfather rights would permit a converted savings and loan holding company to engage in unlimited commercial, securities, and other activities without becoming subject to the limitations on these activities that would apply to bank holding companies and their subsidiaries pursuant to Titles I, II,

and III of the Act, the grandfather rights, as approved by the Committee on Commerce, are subject to prudential limitations. A savings and loan holding company's grandfather rights cannot be transferred, and cease to exist if a converted savings and loan acquires control of another bank.

In addition, the grandfather provisions of Title IV as approved by the Committee on Commerce eliminate provisions that were included in the bill as reported by the Banking Committee that would have permitted national banks to "charter up," or acquire all the powers granted to savings and loan associations pursuant to HOLA. Those provisions would have granted banks the authority to engage in securities activities without becoming subject to the Federal securities laws, which would have been inconsistent with and undermined the functional regulation of those activities as provided in Titles I, II, and III of the Act.

Title IV would merge the Office of Thrift Supervision (OTS) with the Office of the Comptroller of the Currency, and merge the SAIF and BIF.

Background and Need for Legislation

The Glass-Steagall Act imposes barriers between commercial banking, commonly the taking of deposits and the making of commercial loans, and investment banking, the raising of capital for companies through the public offering of securities. The stated legislative purpose for the Glass-Steagall Act, passed in the wake of the stock market crash of 1929 and the ensuing Depression, was to prevent banks from engaging in activity deemed at the time to be too risky for banks, such as securities underwriting, and to prevent conflicts of interest between commercial and investment banking, which were thought to have led to speculative frenzy on the stock market. The principal Federal statute governing securities activity, the Securities Exchange Act, was enacted in 1934. Because commercial banks effectively were barred from the securities industry by the Glass-Steagall Act, the Exchange Act excluded banks from the definitions of "broker" and "dealer", effectively excluding banks from broker-dealer regulation under the Federal securities laws.

In recent years, the financial services industry has undergone significant change, largely as a result of administrative actions by Federal banking regulators. Actions by the OCC and by the Federal Reserve Board have enabled banks to become increasingly engaged in securities and insurance activities. Notably, the erosion of these limitations has resulted from administrative, rather than Congressional action, by broad interpretations of the Glass-Steagall Act and the National Bank Act.

In November of 1996, the OCC announced interpretive changes to Part 5 of the National Bank Act, greatly expanding the standard for determining the scope of permissible activities for national banks. Pursuant to this interpretive action, national banks would be permitted, through their operating subsidiaries, to engage in activities that are statutorily prohibited to the bank itself. Based on these interpretive changes by the Comptroller, national banks to date have applied to the Comptroller for the authority to conduct

real estate development in an operating subsidiary and to underwrite municipal revenue bonds in an operating subsidiary.

The OCC has further undertaken numerous "reinterpretations" of the National Bank Act to authorize increased national bank insurance activities. Of particular note is a decision by the OCC to reinterpret Federal banking laws to authorize national banks to sell insurance nationwide through small town branches. The OCC has also expanded the sphere of bank-eligible and incidental products into what many insurance underwriters have argued is their traditional turf.

The Federal Reserve Board also has taken action that has expanded the extent to which bank holding companies, through their affiliates, may engage in securities activities. Originally, in 1987, the Federal Reserve Board permitted a bank holding company affiliate to derive no more than 5 percent of its gross revenues from securities activities. This limitation was designed to comply with the language of section 20 of the Glass-Steagall Act prohibiting commercial bankers from being "engaged principally" in investment banking. In 1989, the Federal Reserve Board raised the so-called "section 20 caps" to 10 percent of the affiliate's gross revenues, and in 1996, raised the caps again to 25 percent. In August of this year, the Federal Reserve Board rescinded many of the prudential restrictions, commonly referred to as firewalls, imposed in its original section 20 order and designed to prevent the risks of securities underwriting and dealing from being passed to an affiliated bank. The Board consolidated the remaining restrictions as a series of eight operating standards.

The administrative actions of the OCC have led to numerous court battles to define permissible lines of activities among financial services providers, focusing primarily upon activities involving insurance sales and underwriting. The actions of banking regulators expanding the permissible securities activities of banks have also led to competitive imbalances among financial services providers, by providing for differing regulatory schemes among banks, securities and insurance providers engaged in the same activities. The ability of banks to own securities firms and engage in securities and insurance activities, while securities and insurance firms are unable to own banks, has given banks competitive advantages that are unavailable to securities and insurance firms.

The Financial Services Act addresses these developments by creating a new regulatory structure that permits affiliations among different financial services providers, provides for functional regulation of securities activities, and preserves State regulation of insurance activities, while preserving the ability of banks to engage in traditional banking activities.

AFFILIATIONS

Title I of the bill eliminates the barriers to affiliation among financial services providers that are contained in the Glass-Steagall Act of 1933 and the Bank Holding Company Act of 1956, and creates a new type of financial holding company that is permitted to control banks, securities firms, insurance companies, and other financial firms. As a result, for the first time, securities firms and insurance companies would be permitted to own or affiliate with a

commercial bank, thus creating competitive equality among financial services providers. Financial holding companies would be subject to streamlined oversight by the Federal Reserve Board to ensure that activities of the holding company and its affiliates are consistent with the preservation of the safety and soundness of the U.S. banking system and monetary system and are not subject to unnecessary or duplicative Federal regulation.

Title I also includes provisions limiting the powers of operating subsidiaries of national banks to only those powers that are permissible for national banks to engage in, except that the title also authorizes national banks to own operating subsidiaries that are engaged in general insurance agency activities. These provisions are designed to limit the expansion of the Federal safety net that many argue would result if operating subsidiaries, which enjoy the subsidy created by the existence of Federal deposit insurance, access to the Federal payment system, and favorable access to the Federal Reserve Board discount window, were able to engage in securities and other activities that are prohibited to their parents, and to prevent the competitive disparities that would result from such an expansion of the Federal safety net. In hearings before the Subcommittee on Finance and Hazardous Materials, Federal Reserve Board Chairman Alan Greenspan raised concerns with respect to the competitive disparity that would be created by permitting national bank operating subsidiaries to engage in activities, such as securities activities, not permitted to the national bank itself:

> [* * *] one cannot eliminate the fact that equity investment in [bank] subsidiaries is funded by the sum of insured deposits and other bank borrowings that directly benefit from the subsidy of the safety net.
>
> Thus, inevitably, a bank subsidiary must have lower cost of capital than an independent entity and even a subsidiary of the bank's parent [(e.g., a separately capitalized affiliate)]. Indeed, one would expect that a rational banking organization would, as much as possible, shift its nonbank activity from the bank holding company structure to the bank subsidiary structure. Such a shift from affiliates to bank subsidiaries would increase the subsidy and the competitive advantage of the entire banking organization relative to its nonbank competitors.[1]

FUNCTIONAL REGULATION

The Committee strongly believes that functional regulation—regulation of the same functions, or activities, by the same expert regulator, regardless of the nature of the entity engaging in those activities—has become essential to a coherent financial regulatory scheme, as activities and affiliations expand and change within the financial marketplace. Title II amends the Federal securities laws to provide for functional regulation of securities activities.

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[1] Testimony of Alan Greenspan, Chairman, Board of Governors of the Federal Reserve, before the Committee on Banking and Financial Services, February 13, 1997. (PRINTED, Serial No. 105–1, Committee on Banking and Financial Services).

Subtitle A of Title II amends the Exchange Act to eliminate the blanket exceptions for banks from the definitions of "broker" and "dealer." These exceptions, which have been part of the Exchange Act since its inception, were included in the Exchange Act based on the assumption that the Glass-Steagall Act, which had become law just one year before the Exchange Act, had prohibited all but extremely limited specified bank securities activities. Specifically, at the time of its enactment, the Glass-Steagall Act included exceptions that permitted banks to underwrite and deal in obligations of the United States and many of its instrumentalities, as well as obligations of States and their subdivisions. Amendments to the Glass-Steagall Act made in 1935 permitted banks to provide limited securities brokerage services as an accommodation to their customers, by permitting banks to engage in stock purchases and sales in an "agency" capacity, at the request of customers.

Section 20 of the Glass-Steagall Act forbids affiliation of any Federal Reserve member bank with any business entity "principally engaged" in investment banking activities. For more than fifty years following the enactment of the Glass-Steagall Act, bank holding companies could not underwrite securities.

As noted above, however, the limitations on bank securities activities have eroded as a result of administrative actions by Federal banking regulators. The rationale for the exceptions in the Federal securities laws that apply to banks is, thus, no longer sound, given the extensive and increasing securities activities in which banks are engaging.

In addition, these exceptions have created a competitive disparity between competitors in the financial services marketplace by permitting banks to engage in securities activities without being subject to the same regulatory requirements that apply to broker-dealers engaging in the same activities. The Committee is also greatly concerned that these exceptions have permitted banks to engage in securities activities for investors who are not protected by the provisions of the Federal securities laws.

Blanket exceptions from securities regulation no longer work for banks actively participating in securities activities. The Committee believes that functional regulation is necessary to ensure that all entities engaged in securities activities and securities professionals are regulated by the same regulatory scheme, administered by the same functional regulator: the Securities and Exchange Commission, which has over 60 years of expertise focused specifically on these activities. The Committee recognizes, however, that certain limited existing bank securities activities may remain excepted from SEC regulation without significantly jeopardizing investor protection and market integrity, based on the limited nature of certain activities and the existing scheme of regulation of other activities.

The exceptions from the definitions of "broker" and "dealer" in H.R. 10, as reported by the Committee on Commerce, reflect the Committee's commitment to ensure that activities that require securities regulation are subject to the Federal securities laws, with minimal disruption of traditional banking activities. The Committee has crafted these exceptions to preserve the ability of banks to continue to engage in activities that they have traditionally been

engaged in, while preventing activities that should be subject to securities regulation from being conducted by banks without functional regulation. The Committee also notes that last year in the National Securities Markets Improvement Act of 1996 (Public Law 104–290, October 11, 1996), it gave the SEC broad exemptive authority as new Section 36 of the Exchange Act and that authority can be utilized should banks require additional appropriate exemption in this area.

INSURANCE

Ever since the Great Depression and the enactment of Glass-Steagall barriers between banking and commerce, questions have been raised over the extent to which banks should be allowed to participate in traditionally non-banking activities such as insurance. Recent regulatory actions by the OCC have greatly increased the controversy over appropriate bank insurance powers.

The Committee's concern over the recent trend towards expansion of bank insurance powers is partly a recognition of the differing goals of traditional banking and insurance regulators. The primary goal of Federal banking regulators is to protect the liquidity and solvency of the banking system. In contrast, insurance regulators are primarily focused on market conduct of agents in terms of consumer protection and the long-term ability of underwriters to pay claims in order to protect insurance consumers and State insurance guarantee funds. These objectives are sometimes in conflict, particularly in relation to the transfer of funds between bank and insurance affiliates.

Banks are allowed to choose between a State or Federal charter and have some degree of regulatory arbitrage available in the competition between the different regulators. In contrast to the dual regulatory system provided for banks under Federal law, insurance is governed solely at the State level, by fifty separate State statutes. When the Supreme Court in 1944 tried to shift the power of insurance regulation from the States to the Federal government, Congress passed the McCarran-Ferguson Act, overturning the Supreme Court ruling and clarifying State supremacy in insurance regulation. The McCarran-Ferguson Act states that:

> No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, * * * unless such Act specifically relates to the business of insurance. 15 U.S.C. § 1012(b).

The banking and insurance regulatory systems potentially clash when banks become involved in insurance activities. Despite the limits of the McCarran-Ferguson Act, the OCC over the last decade has slowly been encouraging national banks to expand into the field of insurance, beyond what has been permissible under State law. When the OCC and State insurance regulators clash over whether a product is a banking or insurance activity and how it should be regulated, courts, as a result of the United States Supreme Court *Chevron* ruling, defer to reasonable interpretations of law by Federal regulators—in this case, the OCC. In *Barnett Bank of Marion County, N.A.* v. *Nelson,* the Supreme Court upheld the

OCC's Federal preemption of State insurance law, ruling that State regulation would only be applicable where it did not "prevent or significantly interfere" with the Federally authorized activities of a national bank.

Because the courts are required to give deference to Federal agencies over State regulators, this gives the OCC the upper hand in choosing which insurance powers it wants to give to its Federally chartered banks, and which State laws it wants to preempt or allow. For example, the OCC is currently considering whether to preempt Rhode Island law governing bank insurance sales, which sets forth licensing and disclosure requirements, as well as limits on the sale of insurance by loan officers. The OCC has also expanded the "town of 5,000" law, which permitted bank insurance sales within small towns, to allow insurance sales nationwide through banks which have a branch in a small town.

The Committee also recognizes, however, that a majority of States now allow their State chartered banks some degree of permissible insurance activities. Many States have "wild card" statutes which allow their State chartered banks parity with any insurance powers authorized by the OCC for Federally chartered banks, in order to equalize competition and lessen the number of banks that switch charters to take advantage of the regulator offering them the most new powers and the least regulation. The Committee also received testimony from numerous witnesses pointing out that bank insurance activities could increase consumer choice and create greater synergies, particularly in under-served communities. Additional testimony was received on the advantages of uniform national insurance standards over 50plus different State standards, many of which are arguably anti-competitive or discriminatory in nature.

In considering the appropriate level of regulation and consumer protection that should be applied to banks, the Committee took particular note of the Illinois State bill governing bank insurance activities. This agreement was jointly negotiated and widely supported by all of the involved industries and addresses many of the same issues involved in the current Glass-Steagall reform legislation.

In reviewing the Illinois agreement, the Committee received oral and written testimony from agent associations and consumer groups indicating concern about banks tying their customer loans into insurance purchases. While Federal law prohibits direct tying, the fear is that many bank customers applying for a loan will mistakenly believe that their loan approval probability would increase if they also purchased insurance from the bank. The Illinois bill requires written disclosures and signage noting a consumers "Freedom of Choice" to agree to or reject insurance solicitations without impairing the loan approval. For large bank branches with over $100 million in deposits, the Illinois law also requires the loan officer to refer the customer to another individual (not involved in that particular loan transaction) at a different desk.

The Committee also heard testimony on the importance of distinguishing between insurance and banking products for the purpose of determining bank underwriting eligibility and regulation. When Glass-Steagall was first enacted, the lines between traditional bank

and insurance products were readily discernable and easy to draw. Recently, these lines have become increasingly blurred, as many modern financial products are hybrids of banking, securities, and insurance services. For example, a variable annuity might include elements of actuarial expectations (insurance), traditional bank savings, and securities investments.

Currently, the courts are required to defer to the OCC's determination of whether an insurance related instrument is a bank product, or even "incidental" to a banking product. Past legislative proposals have tried to define insurance, based on either specific definitions or according to current State law. Other proposals have separately, or in conjunction with a definition, tried to create a dispute resolution system to equalize the deference given to the banking regulator over the insurance regulators.

H.R. 10, as reported by the Banking Committee, provided that a bank may not underwrite (noncredit-related) insurance directly or in an operating subsidiary, except for products currently offered or which banks are expressly authorized to offer by the OCC as of January 1, 1997. It further defined insurance as any product regulated as of January 1, 1997, by the States as insurance, and any new form of such product that is developed in the future, as well as any annuity contract. If the Comptroller classified a new product as a banking product based on the definitions of current banking products, then a State insurance regulator could challenge such determination with a newly created National Council on Financial Services (the Council). In such case, the Council would submit the petition to the Federal Reserve Board, which determines if the arguments raised a substantial question on the merits. If so, the Council may conduct a public hearing on the issue and then resolve the issue. The State insurance regulator, the Comptroller, or other affected party may then appeal the Council's decision to the Federal Court of Appeals for judicial review.

Many banks objected to the definitions of insurance and banking products in H.R. 10, as reported by the Banking Committee, arguing that the insurance definition is too expansive, potentially allowing a State insurance regulator to preclude a bank from offering a future hybrid product that is primarily a core banking activity. Numerous industry groups and various Federal and State financial regulators also criticized the regulatory role of the newly created Council. This resolution process adopted by the Banking Committee was intended to overcome problems with the Supremacy clause and the *Chevron* doctrine—which effectively resulted in the Comptroller trumping any insurance product determination by State regulators. Eliminating the Council requires the creation of an alternative dispute resolution process which allows a regulatory conflict between a State insurance regulator and Federal banking regulators to be determined on the merits, not based on deference to the regulators of one particular industry.

THRIFT CHARTER

As reported by the Banking Committee, H.R. 10 included a title that would require that all Federal savings associations convert to national banks within two years after the date of enactment. At that time, State-chartered savings associations would be treated as

commercial banks for purposes of Federal banking law. However, section 316 of the Banking Committee thrift title specifically limits the supervision and regulation of converted savings and loan holding companies for a period of three years after becoming bank holding companies to the same manner and extent and subject to the same requirements as heretofore administered by the Office of Thrift Supervision (OTS). The title also provided for the merger of the OTS with the OCC, as well as the merger of the Savings Association Insurance Fund (SAIF) and the Bank Insurance Fund (BIF).

This title would carry out the merger of the banking and thrift charters as required by the Deposit Insurance Funds Act of 1996 as a prerequisite to the merger of the BIF and the SAIF.

The Committee on Commerce has retained this title in large part, with amendments to provisions within the Committee's jurisdiction relating to the grandfathering of securities and other powers by converting savings and loan associations.

The Committee on Commerce continues to have significant concerns about retaining this title in the Act as the legislation proceeds to consideration by the full House of Representatives. Existing savings and loan institutions and holding companies, as well as the many institutions that have applied for a savings and loan charter in recent months, have raised concerns that eliminating the savings and loan charter will reduce competition within the financial marketplace and needlessly eradicate a useful and flexible vehicle that is instrumental in providing mortgage financing. Moreover, if this title is retained by the House, the Committee has serious reservations about exempting these converted holding companies from the same prudential safeguards applicable to all other financial holding companies both as regards fair competition and consistent protections for investors, consumers, and taxpayers.

HEARINGS

The Subcommittee on Finance and Hazardous Materials held three oversight hearings on Financial Services Reform on May 1, 1997, May 14, 1997, and June 24, 1997. The hearing on May 1, 1997 focused on A Two Way Street and Functional Regulation. The Subcommittee received testimony from the following witnesses: Mr. James F. Higgins, President, Dean Witter Financial, Dean Witter, Discover and Company; Mr. Mark Sutton, Executive Vice President and Director of Private Client Group, Paine Webber, Inc.; Mr. Arnold D. Scott, Senior Executive Vice President, Massachusetts Financial Services Company; Ms. Cheryl Cook-Snyder, Partner, Edward D. Jones, Inc.; Mr. Mark Pope, Vice President and Director of Federal Government Relations, Lincoln National Corporation; and Mr. W. Craig Zimpher, Vice President, Government Relations, Nationwide Insurance Enterprise.

On May 14, 1997, the Subcommittee held a hearing which focused on Consolidation in the Brokerage Industry. The Subcommittee received testimony from the following witnesses: Mr. Saul S. Cohen, Proskauer Rose Goetz, & Mendelsohn, LLP; Mr. Brandon Becker, Wilmer, Cutler & Pickering; Mr. Martin Mayer, Economic Studies Program, The Brookings Institution; and The Honorable Richard C. Breeden, Richard C. Breeden & Co.

On June 24, 1997, the Subcommittee concluded its oversight hearings with a hearing on Insurance Regulation. The Subcommittee received testimony from the following witnesses: Mr. Glenn Pomeroy, Vice President, National Association of Insurance Commissioners; Mr. Dino Gavanes, CIC, Premier Risk Services, Inc., representing the Professional Independent Insurance Agents of Illinois and Illinois Life Underwriters Association; Mr. Arthur Wilkinson, Chief Executive Officer, State Bank of Bement; Dr. Nicos A. Scordis, Economist, College of Insurance; and Mr. Larry Zimpleman, President, American Academy of Actuaries.

In addition, the Subcommittee on Finance and Hazardous Materials held three days of legislative hearings on H.R. 10, the Financial Services Competitiveness Act of 1997, on July 17, 1997, July 25, 1997, and July 30, 1997.

On July 17, 1997, the Subcommittee received testimony on H.R. 10 from the following witnesses: The Honorable Arthur Levitt, Chairman, Securities and Exchange Commission; The Honorable John D. Hawke, Jr., Under Secretary, Department of the Treasury; The Honorable Alan Greenspan, Chairman, Board of Governors, Federal Reserve System; The Honorable George Nichols, III, Chairman, Former Special Committee on Banks and Insurance, Commissioner of Insurance, Kentucky Department of Insurance, representing: The National Association of Insurance Commissioners; The Honorable Eugene Ludwig, Comptroller, Office of the Comptroller of the Currency; Mr. William J. Baer, Director, Bureau of Competition, Federal Trade Commission; The Honorable Andrew C. Hove, Jr., Acting Chairman, Federal Deposit Insurance Corporation; The Honorable Thomas E. Geyer, Commissioner of Securities, State of Ohio, representing North American Securities Administrators Association; The Honorable Nicolas Retsinas, Director, Office of Thrift Supervision; and The Honorable Catherine A. Ghiglieri, Banking Commissioner, State of Texas, representing the Conference of State Bank Supervisors.

On July 25, 1997, the Subcommittee received testimony on H.R. 10 from the following witnesses: Mr. Mark S. Pope, Vice President, Federal Government Affairs, Lincoln National Corporation; Mr. L. Gerald Roach, President, Mutual Assurance Society of Virginia; Mr. Kenneth S. Cohen, Senior Vice President, Massachusetts Mutual Life Insurance Company; Mr. John P. Hamill, President, Fleet Bank; Ms. Ann M. Kappler, Partner, Jenner & Block, representing the Independent Insurance Agents of America, Inc., the National Association of Life Underwriters, and the National Association of Professional Insurance Agents; Mr. Steven C. Alonso, President, Banc One Financial Services Inc.; Mr. Dan R. Wentzel, Chairman and Chief Executive Officer, North American Title Company; Mr. Harold U. Blythe, President and Chief Executive Officer, James River Bankshares Inc.; and Mr. Albert R. Counselman, CPCU and Chairman, Riggs, Counselman, Michaels, Downs.

On July 30, 1997, the Subcommittee received testimony on H.R. 10 from the following witnesses: Mr. James S. Riepe, Managing Director, T. Rowe Price Associates, Inc.; Mr. Harley Bergmeyer, Chairman, President, and Chief Executive Officer, Saline State Bank, Wilber, Nebraska; and Ms. Mary Griffin, Insurance Counsel, Consumers Union.

COMMITTEE CONSIDERATION

On October 24, 1997, the Subcommittee on Finance and Hazardous Materials met in an open markup session and considered a Committee Print dated October 23, 1997, which was made in order as original text for the purposes of amendment. The Subcommittee approved H.R. 10, the Financial Services Act of 1997, for Full Committee consideration by a roll call vote of 23 yeas to 2 nays, amended with an amendment in the nature of a substitute consisting of the text of the Committee Print dated October 23, 1997, as amended by the Subcommittee.

On October 30, 1997, the Full Committee met in an open markup session and considered a Committee Print showing H.R. 10, as adopted by the Subcommittee on Finance and Hazardous Materials, which was made in order as original text for the purposes of amendment. The Full Committee ordered H.R. 10, the Financial Services Act of 1997, reported to the House by a roll call vote of 33 yeas to 11 nays, with 2 voting present, amended with the text of a Committee Print showing H.R. 10, as adopted by the Subcommittee on Finance and Hazardous Materials, as amended by the Full Committee.

ROLLCALL VOTES

Clause 2(l)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The following includes the recorded vote on the motion to report H.R. 10, including the names of those members voting for and against, and the list of amendments considered during the Full Committee markup.

COMMITTEE ON COMMERCE -- 105TH CONGRESS
ROLL CALL VOTE #48

BILL: H.R. 10, Financial Services Act of 1997

MOTION: Motion by Mr. Bliley to order H.R. 10, reported to the House, amended with the text of a Committee Print showing H.R. 10, as adopted by the Subcommittee on Finance and Hazardous Materials, as amended by the Full Committee.

DISPOSITION: **AGREED TO** by a roll call vote of 33 yeas to 11 nays, with 2 voting present.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley	X			Mr. Dingell	X		
Mr. Tauzin	X			Mr. Waxman			
Mr. Oxley	X			Mr. Markey	X		
Mr. Bilirakis	X			Mr. Hall		X	
Mr. Schaefer	X			Mr. Boucher		X	
Mr. Barton		X		Mr. Manton	X		
Mr. Hastert	X			Mr. Towns	X		
Mr. Upton		X		Mr. Pallone	X		
Mr. Stearns		X		Mr. Brown	X		
Mr. Paxon	X			Mr. Gordon			X
Mr. Gillmor	X			Ms. Furse		X	
Mr. Klug				Mr. Deutsch	X		
Mr. Greenwood				Mr. Rush		X	
Mr. Crapo	X			Ms. Eshoo	X		
Mr. Cox	X			Mr. Klink		X	
Mr. Deal	X			Mr. Stupak	X		
Mr. Largent	X			Mr. Engel	X		
Mr. Burr		X		Mr. Sawyer	X		
Mr. Bilbray			X	Mr. Wynn		X	
Mr. Whitfield	X			Mr. Green		X	
Mr. Ganske	X			Ms. McCarthy	X		
Mr. Norwood	X			Mr. Strickland	X		
Mr. White	X			Ms. DeGette	X		
Mr. Coburn							
Mr. Lazio	X						
Mrs. Cubin							
Mr. Rogan	X						
Mr. Shimkus	X						

10/30/97

COMMITTEE ON COMMERCE -- 105TH CONGRESS
VOICE VOTES
10/30/97

BILL: H.R. 10, Financial Services Act of 1997

COMMITTEE PRINT: Committee Print showing H.R. 10, as adopted by the Subcommittee on Finance and Hazardous Materials. (A unanimous consent request by Mr. Bliley to make a Committee Print showing H.R. 10, as adopted by the Subcommittee on Finance and Hazardous Materials, in order as original text for the purposes of amendment, was agreed to without objection.)

DISPOSITION: AGREED TO, amended, by a voice vote.

AMENDMENT: En bloc Amendment to the Committee Print by Mr. Bliley re: (1) provides a basket for commercial affiliations for insured banks; (2) grandfathers thrift powers; (3) provides conditions for redomestication of mutual insurers; and (4) makes certain other changes.

DISPOSITION: AGREED TO by a voice vote.

AMENDMENT: Amendment to Title I of the Committee Print by Mr. Gillmor re: reduces Federal Reserve Board supervision over non-bank affiliates of financial holding companies.

DISPOSITION: AGREED TO by a voice vote.

AMENDMENT: Amendment to Title I of the Committee Print by Mr. Rush re: includes application of provisions of the Community Reinvestment Act to non-bank affiliates of financial holding companies.

DISPOSITION: WITHDRAWN by unanimous consent.

AMENDMENT: En bloc Amendment to Title I and Title II of the Committee Print by Mr. Lazio re: changes the functional regulation provisions to provide greater exemptions to banks from the Federal securities laws. (A unanimous consent request by Mr. Lazio to offer the amendment en bloc was agreed to without objection.)

DISPOSITION: WITHDRAWN by unanimous consent.

AMENDMENT: Amendment to Title I of the Committee Print by Mr. Markey re: add provisions dealing with lifeline banking and insurance redlining.

DISPOSITION: WITHDRAWN by unanimous consent.

AMENDMENT: Amendment to Title I of the Committee Print by Mr. Markey re: restrict companies from sharing consumer information among affiliates in a holding company.

DISPOSITION: WITHDRAWN by unanimous consent.

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AMENDMENT: Amendment to Title III of the Committee Print by Mr. Klug re: include mortgage guaranty insurance in the definition of insurance.

DISPOSITION: WITHDRAWN by unanimous consent.

AMENDMENT: Amendment to Title III of the Committee Print by Mr. Pallone re: prevent banks from using coercive sales practices in connection with making loans and purchasing insurance.

DISPOSITION: WITHDRAWN by unanimous consent.

AMENDMENT: Amendment to Title III of the Committee Print by Ms. DeGette re: requires promulgation of rules to prevent providers of insurance from discriminating against victims of domestic violence.

DISPOSITION: AGREED TO by a voice vote.

AMENDMENT: Amendment to Title IV of the Committee Print by Mr. Rush re: strike all of Title IV except provisions authorizing the creation of mutual bank holding companies.

DISPOSITION: WITHDRAWN by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held legislative and oversight hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R 10, the Financial Services Act of 1997, would result in no new or increased budget authority or tax expenditures or revenues.

COMMITTEE COST ESTIMATE, CONGRESSIONAL BUDGET OFFICE ESTIMATE, AND FEDERAL MANDATES STATEMENT

At the time of the filing of this report, the Congressional Budget Office's (CBO's) analysis of the amendment to H.R. 10 reported by the Committee on Commerce concerning cost estimates and unfunded mandates was not available. The CBO analysis will be provided in a supplement to this report.

Based upon consultation with the Congressional Budget Office and CBO's analysis of H.R. 10 as reported by the Banking Committee, the Committee on Commerce finds that the Committee amendment to H.R. 10 will: (1) have little or no effect on the Federal budget over time; and (2) does not create any unfunded mandates above the threshold established under the Unfunded Mandates Reform Act.

CBO's analysis of H.R. 10 as reported by the Banking Committee indicated that the legislation would create certain private sector mandates because of provisions of the subtitle affecting the Federal Home Loan Bank System. The Committee on Commerce deleted this subtitle in its entirety from its amendment to H.R. 10. Thus, the Committee finds that the private sector mandates analysis of the CBO is not relevant to the Committee on Commerce's amendment.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; purposes

Section 1 designates the Act as the "Financial Services Act of 1997".

TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS, INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS

Subtitle A—Affiliations

Section 101. Glass-Steagall Act reformed

Section 101 of the Financial Services Act of 1997 (the Act) repeals Section 20 and Section 32 of the Banking Act of 1933, the anti-affiliation provisions of the Glass-Steagall Act.

Section 20 currently prohibits any bank that is a member of the Federal Reserve System from affiliating with any company that is "engaged principally in the issue, floatation, underwriting, public sale or distribution" of securities (12 U.S.C. 377). The effect of repealing Section 20 is to permit affiliations between securities firms and banks regardless of the type or volume of securities activities conducted by the securities firm.

This change is intended to facilitate a two way competitive street between securities firms, insurance companies, and banks. Under current law, banking regulators have effectively allowed banks into the securities business and the business of insurance sales. Securities firms and insurance companies are statutorily barred from owning insured depository institutions. Repeal of this section is necessary to facilitate a two way street.

Section 32 currently prohibits any officer, director, or employee of a company "primarily engaged in the issue, floatation, underwriting, public sale, or distribution" of securities from serving simultaneously as an officer, director, or employee of any member bank, except as allowed by the Federal Reserve Board (12 U.S.C. 78). Repealing Section 32 will permit banks and securities firms to have common officers, directors, and employees.

Section 102. Activity restrictions applicable to bank holding companies which are not financial holding companies

Section 102 amends Section 4(c)(8) of the Bank Holding Company Act of 1956, as amended (HCA), to permit all bank holding companies to engage in those activities that the Federal Reserve Board has determined, by regulation in effect as of the day before enactment of the Act, to be so closely related to banking as to be a proper incident thereto. Bank holding companies that qualify as financial holding companies also may engage in those activities authorized under Section 6 of the HCA, as added by Section 103 of the

Act. Section 102 also makes technical and conforming amendments to Section 105 of the Bank Holding Company Act Amendments of 1970 and Section 4(f) of the Bank Service Company Act.

Section 103. Financial holding companies

Section 103 adds a new Section 6 to the Bank Holding Company Act and creates a structure for affiliations, entitled "Financial Holding Companies." This section establishes the new framework for affiliations between and among securities firms, insurance companies, banks, and other financial entities. The framework adopted in Section 6 is significantly different than that currently found in Section 4 of the Bank Holding Company Act.

This section permits financial holding companies to affiliate with any company engaged in activities that are "financial in nature" or that are incidental to activities that are financial in nature (even if the incidental activity is not itself financial in nature). Certain activities, including insurance and securities underwriting activities, investment advisory activities, and merchant banking activities, are deemed to be financial in nature by the Act.

Financial holding companies also may engage in any other activity that the Federal Reserve Board determines or has determined to be financial in nature. The "financial in nature" test established by section 103 is significantly more flexible than the "closely related to banking" standard in current law and permits authorization of financial activities that banks cannot conduct or are not equipped to conduct. In defining these activities, the Federal Reserve Board is required to take into account factors such as the Act's authorization of affiliations between banks, securities firms, insurance companies, investment advisers and others, as well as technological and other changes in the marketplace for financial products and services, and whether it is appropriate to permit financial holding companies to conduct the activity in order to compete effectively with other companies that provide financial services.

Financial holding companies are also permitted by section 103 to engage in and acquire companies engaged in a limited basket of nonfinancial activities. In addition, companies that become both a bank holding company and a financial holding company after the date of enactment of the Act are permitted to retain nonfinancial activities and affiliations so long as the company remains predominantly engaged in financial activities. These expanded financial and nonfinancial affiliations are permissible for holding companies that meet the criteria set forth for financial holding companies. This is a new test that is independent of the restrictions contained in the Bank Holding Company Act. Existing holding companies may limit their activities to those that currently are permissible under section 4 of the Bank Holding Company Act may do so without meeting the requirements for being a financial holding company.

a. Financial holding companies

As set forth in section 6(b), a bank holding company qualifies as a financial holding company if all of the holding company's subsidiary depository institutions are well capitalized, well managed, and

have a satisfactory or better rating under the Community Reinvestment Act of 1977 (CRA) as of the most recent examination of the depository institution.

b. Financial activities

The Act provides specifically that certain activities are financial in nature, including insurance and securities underwriting activities; activities that the Federal Reserve Board previously has determined by order or regulation to be closely related to banking; financial, investment or economic advisory services; activities conducted in the United States that the Federal Reserve Board has found by regulation to be both permissible for a bank holding company and usual in connection with the transaction of banking or other financial operations abroad; and issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly. Section 6(c) also authorizes a financial holding company to engage in any activity that the Federal Reserve Board has determined to be financial in nature or incidental to such financial activities. In determining whether an activity is financial in nature or incidental to financial activities, the Federal Reserve Board is directed to take into account changes or reasonably expected changes in the marketplace in which financial holding companies compete and changes in the technology by which these services are delivered. Section 6 also gives the Federal Reserve Board broad authority to define and authorize other activities as financial in nature or incidental to financial activities, and directs the Federal Reserve Board to define the permissible scope of several activities, including arranging financial transactions for the account of third parties, transferring financial assets and lending or investing financial assets other than money or securities.

Section 6(c)(3)(H) authorizes a financial holding company that controls a securities firm to own an interest in any company as part of a bona fide underwriting or merchant banking activity. Section 6(c)(3)(I) authorizes an insurance company that is predominantly engaged in insurance underwriting and is controlled by a financial holding company to make investments in any company in the ordinary course of its insurance business and in accordance with State law. Under these provisions, a financial holding company may not directly or indirectly engage in merchant banking or insurance company investment activities under these subsections and may not engage in covered transactions (as defined in Section 23A of the Federal Reserve Act) with any affiliate engaged in merchant banking or insurance company investment activities.

c. Authority to engage in financial activities

Section 6(c) provides that a financial holding company may engage, directly or indirectly, in any financial activity authorized under Section 6 (other than the acquisition of a savings association) without the prior approval of the Federal Reserve Board. This change is intended to facilitate the entrepreneurial culture of investment banks which take risk without need for prior government approval of their activities. In order to inform the Federal Reserve Board of the company's activities, the financial holding company must provide the Federal Reserve Board with written notice within

30 days of commencing an activity or acquiring shares of a company under Section 6(c).

d. Noncompliance with the criteria for financial holding companies

Section 6(d) sets out the procedures to be followed if a financial holding company or its subsidiaries fail to continue to meet the capital, management and CRA requirements set out in Section 6(b) for such companies and subsidiaries. If the Federal Reserve Board finds that a financial holding company is not in compliance with the requirements contained in Section 6(b), the Federal Reserve Board must provide notice to the company. The company must, within 45 days of receipt of such notice (or such additional period as the Federal Reserve Board may permit), execute an agreement with the Federal Reserve Board to comply with the requirements for financial holding companies. Until the company complies with the requirements of Section 6(b), the Federal Reserve Board may impose such limitations on the company or an affiliate as the Federal Reserve Board deems appropriate. If a financial holding company has not restored its subsidiary depository institutions to compliance with the capital, managerial, or CRA requirements of Section 6(b) within specified time periods, the Federal Reserve Board may require the company either to divest control of any subsidiary depository institution or cease engaging in any activity under Section 6. The Federal Reserve Board may take similar action if the company fails to execute and implement an agreement with the Federal Reserve Board, or abide by any limitations imposed by the Federal Reserve Board under Section 6(d).

e. Internal controls

Section 6(e) requires a financial holding company to have appropriate internal controls to assure that its procedures for identifying and managing financial and operational risks within the company and its subsidiaries adequately protect the company's subsidiary insured depository institutions from such risks and that it has reasonable policies and procedures to preserve the separate corporate identity and limited liability of the company and its subsidiaries for the protection of the subsidiary insured depository institutions.

f. Limited basket of nonfinancial activities; grandfather rights

Section 6(f) permits any financial holding company to engage in, or acquire the shares of a company engaged in, a limited basket of nonfinancial activities. First, the aggregate annual gross revenues derived by the financial holding company from all such activities and all such companies must not exceed 5 percent of the financial holding company's consolidated annual gross revenue or $500,000,000, whichever is less. For purposes of determining compliance with the revenue limitation, the revenues of all activities conducted or companies held pursuant to the grandfather rights established by Section 6(g) must be included in the basket. Second, a financial holding company may not acquire the shares of any company that has consolidated total assets of $750,000,000 or more at the time of the acquisition. To inform the Federal Reserve Board

of the company's activities, a financial holding company that engages in a nonfinancial activity, or acquires the shares of a company engaged in a nonfinancial activity, must provide the Federal Reserve Board with notice within 30 days of commencing the activity or acquiring the shares.

Section 6(g) permits a company (other than a bank holding company or a foreign bank) that becomes a financial holding company after the date of enactment of the Act to retain those nonfinancial investments and activities that the company held or engaged in as of September 30, 1997. To qualify for these grandfather rights, the company must have derived at least 85 percent of its annual gross revenues from financial activities as of the day before the company became a financial holding company. Thus, an eligible company that becomes a financial holding company after the date of enactment of the Act may continue to engage in nonfinancial activities under section 6(g) provided that such activities did not comprise more than 15 percent of the company's annual gross revenues on the day before the company acquired a bank. Section 6 limits the expansion of these grandfathered nonfinancial activities. Any company engaged in grandfathered activities under Section 6(g) may engage in new activities, acquire shares of a company or acquire assets of a company in a merger, consolidation or other business combination only to the extent otherwise permissible for non-grandfathered companies under Section 6. An insured depository institution subsidiary of a financial holding company that engages in nonfinancial activities or owns any company engaged in nonfinancial activities may not engage in covered transactions (as defined in Section 23A of the Federal Reserve Act) with any affiliate engaged in nonfinancial activities. All depository institution subsidiaries of the company also are prohibited from engaging in cross marketing activities with such nonfinancial affiliates, as well as with any affiliate held pursuant to the merchant banking or insurance company investment authority.

g. Developing activities

Section 6(h) allows all financial holding companies to engage in a limited amount of financial activities in circumstances where the Federal Reserve Board has not previously considered whether the activity in question is financial in nature. This section has been specifically included by the Committee to allow financial holding companies to respond quickly and efficiently to developments in the financial services industry. In particular, a financial holding company may engage in an activity that the Federal Reserve Board has not yet determined to be a financial activity if the holding company reasonably believes that the activity is financial in nature or incidental to financial activities. The company's determination must take into consideration the factors set forth in section 6(c), as well as actions taken by the Federal Reserve Board under section 6(c), including whether the Federal Reserve Board previously has determined that the activity is not financial in nature (or incidental to financial activities). Activities conducted pursuant to section 6(h) also are subject to certain revenue, asset, and capital investment limitations. A financial holding company must provide the Federal

Reserve Board with written notice within 10 business days of acquiring shares or commencing an activity under section 6(h).

Section 104. Certain State affiliation laws preempted

Section 104 prohibits States from preventing or restricting an insured depository institution or wholesale financial institution (as established in section 136 of the Act) from being affiliated with any entity where such affiliation is permitted by the Act or section 17(i) of the Securities Exchange Act of 1934 (Exchange Act). The section also prohibits States from preventing or significantly interfering with the ability of a national bank or a wholesale financial institution to engage, directly or indirectly or in conjunction with such any affiliate permitted under the HCA or section 17(i) of the Exchange Act, in any activity authorized under sections 6 or 10 of the HCA or section 17(i) of the Exchange Act.

Although the Committee intends the new subsection (c)(2) of section 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846) to be parallel to the analysis of the United States Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson*, 116 S. Ct. 1103 (1996), it does not intend, by implication or otherwise, to expand or narrow the scope of the *Barnett* ruling.

Section 105. Mutual bank holding companies authorized

Section 105 provides that mutual bank holding companies will be regulated similarly to other bank holding companies.

Section 106. Prohibition on deposit production offices

Section 106 applies the provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act regarding deposit production offices and out-of-State lending to any interstate branch established or acquired under this Act. In addition, this section expands the definition of interstate branch for purposes of the deposit production provisions to include all branches of a bank owned by an out-of-State bank holding company.

Section 107. Clarification of branch closure requirements

Section 107 applies the provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act regarding branch closures by an interstate bank to any branch of a bank that is controlled by an out-of-State bank holding company.

Section 108. Amendments relating to limited purpose banks

Limited purpose banks are banks that do not accept demand deposits and make commercial loans, but that are insured by the Federal Deposit Insurance Corporation (FDIC). Prior to 1987, companies that controlled limited purpose banks were not subject to the HCA. The Competitive Equality Banking Act of 1987 grandfathered those companies that controlled a limited purpose bank in existence at the time. In order to retain their exemption from the HCA, grandfathered companies and the limited purpose banks they control are required to comply with certain restrictions.

Specifically, a limited purpose bank currently is not allowed to engage in any activity in which it was not engaged in as of March 5, 1987. Section 108 permits well capitalized and well managed

limited purpose banks to engage in any banking activity, but maintains the restriction whereby limited purpose banks are permitted to either accept demand deposits or make commercial loans, but not both. Limited purpose banks that accept demand deposits would continue to be restricted in their ability to engage in making traditional commercial loans, but the section would permit them to issue corporate credit cards (e.g., cards used by business employees for travel and entertainment expenses). This section also amends current law to permit limited purpose banks to cross market affiliate products.

Current law requires divestiture of a limited purpose bank that violates the established activities restrictions. Section 108 amends current law to permit limited purpose banks to avoid divestiture by correcting violations within six months upon receiving notice from the Federal Reserve Board.

Subtitle B—Streamlining Supervision of Financial Holding Companies

This subtitle establishes a new system of supervision for financial holding companies and their affiliates. The Committee determined that because securities firms and insurance companies will be important components of these holding companies, a new regulatory structure for them would be appropriate, consistent with the Committee's interest in securities and exchanges and regulation of the business of insurance.

Section 111. Streamlining financial holding company supervision

This section makes significant changes in the role of the Federal Reserve Board in overseeing holding companies. The Committee determined that these changes are necessary to implement the two way street and avoid duplicative regulation of securities firms and insurance companies. Section 111 changes the reporting and examination requirements currently applicable to bank holding companies under section 5(c) of the Bank Holding Company Act. These changes were made because the Committee determined that the new structure being established for financial services companies including securities firms and insurance companies necessitated different regulatory treatment.

Section 111 provides that the Federal Reserve Board may not examine the non-bank subsidiaries of financial services holding companies, absent exigent circumstances. The Committee determined that although it was appropriate for the Federal Reserve Board to have supervisory authority over holding companies, the authority over affiliates should be confined to the functional regulators. Section 111 requires the Federal Reserve Board, to the fullest extent possible, to focus its examinations on the holding company and affiliates that may pose a material risk to a depository institution affiliate. The Federal Reserve Board must use reports of examinations made by the Securities and Exchange Commission (SEC), State insurance regulators and other authorities that the Federal Reserve Board finds comprehensively supervise an affiliate. The Federal Reserve Board may examine a bank holding company and its subsidiaries to inform the Federal Reserve Board of: (1) the nature of the operations and financial condition of the holding com-

pany and its subsidiaries; (2) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution; and (3) the company's systems for monitoring and controlling such risks.

The Federal Reserve Board may examine a functionally regulated non-depository subsidiary only if the Federal Reserve Board has reasonable cause to believe that the subsidiary (1) is engaged in activities that pose a material risk to an affiliated depository institution, or (2) is not in compliance with the provisions of the Bank Holding Company Act, as amended by this Act, or with the provisions governing transactions with affiliated depository institutions, and the Federal Reserve Board cannot determine compliance through an examination of the bank holding company or its subsidiary depository institutions.

The Federal Reserve Board shall, to the fullest extent possible, use the reports provided by the bank holding company or subsidiary to other Federal or State regulatory agencies or appropriate self-regulatory organizations, information that is otherwise publicly reported and audited financial statements. If the Federal Reserve Board seeks a report from a functionally regulated subsidiary (i.e., a registered securities broker or dealer, a registered investment adviser with regard to investment advisory activities, an insurance company, or an entity regulated by the Commodity Futures Trading Commission (CFTC) with respect to commodities activities) of a bank holding company that is not required by the subsidiary's functional regulator or appropriate self-regulatory organization, the Federal Reserve Board must first ask the subsidiary's functional regulator or appropriate self-regulatory organization to obtain the report.

Section 111 also provides that the Federal Reserve Board may not impose any capital adequacy rules, guidelines or other actions on a non-depository subsidiary of a bank holding company that is in compliance with the applicable capital requirements of another Federal regulatory authority or State insurance authority. The Federal Reserve Board also may not impose capital adequacy rules on a non-depository subsidiary that is a registered investment adviser with respect to such subsidiary's investment advisory or incidental activities. The Committee determined that the SEC and the State insurance regulators are better situated to regulate these entities.

Section 111 authorizes the Federal Reserve Board to designate the appropriate Federal banking agency for the bank holding company's lead depository institution as the appropriate Federal banking agency for the bank holding company if the bank holding company is not significantly involved in nonbanking activities. In such circumstances, the designated Federal banking agency would have the same authority as the Federal Reserve Board to take actions under specified provision of the Bank Holding Company Act and other specified laws.

This section also requires the Federal Reserve Board to defer to the SEC regarding the interpretation and enforcement of applicable Federal securities laws relating to the activities of registered brokers, dealers, investment advisers, and investment companies. The

Committee also expects the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) to defer to the SEC with regard to the interpretation and application of the Federal securities laws relating to the activities of registered brokers, dealers, investment advisers, and investment companies that are subsidiaries of national banks or thrifts. In addition, this section requires the Federal Reserve Board to defer to the relevant State insurance authorities regarding the interpretation and enforcement of applicable State insurance laws relating to the activities of insurance companies and agents.

The standards established in section 111 for the supervision of holding companies are consistent with standards adopted internationally and by some major trading partners of the United States.

Section 112. Elimination of application requirement for financial holding companies

Section 5(a) of the Bank Holding Company Act is amended to provide that a declaration filed under section 6 by a company seeking to be a financial holding company satisfies the bank holding company registration requirement but not any requirement to file an application to acquire a bank under section 3. The divestiture provisions of section 5(e) are amended to allow a bank holding company to make a choice between divesting a nonbanking subsidiary and divesting an insured depository institution.

Section 113. Authority of state insurance regulator and Securities and Exchange Commission

This section limits the Federal Reserve Board's ability to require that an insurance company or a registered broker or dealer provide funds to an affiliated bank if the State insurance authority or the SEC determines in writing that such action would have a materially adverse effect on the financial condition of the insurance company or the broker or dealer. The Committee determined that this provision was necessary to make clear that the source of strength doctrine does not extend to securities and insurance affiliates of banks. The section allows the Federal Reserve Board to require the bank holding company to divest the bank within 180 days of receiving such notice from the State insurance authority or the SEC.

Section 114. Prudential safeguards

Section 114 authorizes the Federal Reserve Board to impose restrictions on relationships or transactions between a depository institution subsidiary of a bank holding company and any of its affiliates other than a subsidiary of the depository institution. Such restrictions may be imposed to avoid significant risk to the safety and soundness of depository institutions or to the Federal deposit insurance funds. Restrictions also may be imposed for the purpose of enhancing the financial stability of financial holding companies, avoiding conflicts of interest, enhancing the privacy of customers, and promoting the application of national treatment and equality of competitive opportunity between domestic and foreign bank holding companies. The Federal Reserve Board is required to regularly review the continuing need for any restrictions that may be

imposed. Limitations are imposed by section 116 on the Federal Reserve Board's authority to establish prudential safeguards under section 114 on certain functionally regulated affiliates. The Committee determined that these limitations were appropriate to avoid duplicative regulation.

Section 115. Examination of investment companies

Section 115 provides that the Federal banking agencies may not examine or inspect a registered investment company that is not a bank holding company. The SEC is granted sole authority to inspect such registered investment companies and must provide to the Federal banking agencies, upon request, the results of any examination or other information with respect to a registered investment company.

Section 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board

Section 116 adds a new Section 10A to the Bank Holding Company Act (HCA) that provides that the Federal Reserve Board may not take any action under the HCA or section 8 of the Federal Deposit Insurance Act (FDIA) against a regulated subsidiary of a bank holding company unless such action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to the financial safety, soundness or stability of an affiliated depository institution or to the domestic or international payment systems. This section is intended to protect regulated subsidiaries of financial holding companies from duplicative regulation by the Federal Reserve Board. This section prohibits the Federal Reserve Board from regulating the day-to-day operations of regulated subsidiaries. The Committee found that this type of regulation is more appropriately left to the functional regulators. The Federal Reserve Board also may not take such an action against a regulated subsidiary if it is reasonably possible for the Federal Reserve Board to protect effectively against the risk by taking action against a depository institution or against depository institutions generally.

The Committee intends the term "material risk" to mean a risk of serious harm to the financial safety, soundness, or stability of the particular depositary institution or to the payment system.

Section 10A does not affect the Federal Reserve Board's ability to take action under the HCA or section 8 of the FDIA to enforce compliance by a regulated subsidiary with any Federal law that the Federal Reserve Board has specific jurisdiction to enforce against the subsidiary. For purposes of this section, a regulated subsidiary means a company that (1) is not a bank holding company, and (2) is a registered securities broker or dealer, a registered investment advisor (to the extent of such company's investment advisory and incidental activities), a licensed insurance company, or an entity regulated by the Commodity Futures Trading Commission (to the extent of its commodities activities).

Subtitle C—Subsidiaries of National Banks

Section 121. Permissible activities for subsidiaries of national banks

a. Limitation to activities permissible for national banks

Section 121 imposes a general prohibition on a subsidiary of a national bank engaging in any activity, or owning any shares of a company engaged in any activity, that a national bank is not permitted to engage in directly or that is conducted under terms or conditions other than those that would govern the conduct of the activity by a national bank. Section 121 allows a national bank to own a subsidiary engaged in activities that are not permissible for a national bank, but only if a national bank is specifically authorized by the express terms of a Federal statute to own or control the subsidiary. For example, a national bank may control a subsidiary established under Section 25A of the Federal Reserve Act. Section 121 also amends Section 21 of the Glass-Steagall Act, which applies to all banks, to clarify that a subsidiary of a bank may not engage in securities underwriting or dealing, as those terms are commonly defined and interpreted under the Federal securities laws.

b. Insurance agency authorization

Section 121 also specifically authorizes a national bank to own a subsidiary engaged in general insurance agency activities, if the national bank and all of its depository institution affiliates are well capitalized and well managed and have achieved a "satisfactory" or better rating under the CRA at the institution's most recent examination. In addition, prior to establishing any insurance agency subsidiary, the national bank must receive the approval of the Comptroller of the Currency. Because an insurance agency subsidiary may engage in activities not permissible for a national bank, such subsidiaries are treated as nonbank affiliates of the bank for purposes of applying the anti-tying restrictions of the Bank Holding Company Act Amendments of 1970 and the restrictions of Section 23B of the Federal Reserve Act.

Section 122. Misrepresentations regarding depository institution liability for obligations of affiliates

Section 122 makes it a criminal offense for any institution-affiliated party of an insured depository institution or of a subsidiary or affiliate of an insured depository institution to represent fraudulently that an insured depository institution is liable for any obligation of its subsidiary or affiliate.

Section 123. Repeal of stock loan limit in Federal Reserve Act

Section 123 repeals the restriction in section 11(m) of the Federal Reserve Act on loans by Federal Reserve member banks secured by stock or bond collateral. Limitations on loans to one borrower imposed pursuant to other statutory authorizations are not affected.

Subtitle D—Investment Bank Holding Companies; Wholesale Financial Institutions

Subtitle D creates a new type of depository institution—a wholesale financial institution (WFI)—that can accept wholesale deposits which are not insured by the Federal Deposit Insurance Corporation (FDIC). The Committee determined that this new institution, which would not take Federally insured deposits, should have holding company supervision diminished from that required of financial holding companies that hold insured depositary institutions. The subtitle also establishes a special supervisory regime for companies that do not own a depository institution other than a WFI or specified, limited-purpose institutions. To qualify for this supervisory regime, the company must either be substantially engaged in the securities business or have been a bank holding company on the date of enactment of the Act and, in either case, not own any depository institution other than a WFI or a credit card bank, trust company or Edge Act company. Such "investment bank holding companies" are subject to primary supervision by the Federal Reserve Board or the SEC, depending on the aggregate and relative size of the company's banking operations.

CHAPTER 1—INVESTMENT BANK HOLDING COMPANIES

Section 131. Investment bank holding companies established

a. Definition of investment bank holding companies

Section 131 amends Section 10 of the HCA to create a new structure governing the nonbanking activities and supervision of investment bank holding companies. An investment bank holding company is a bank holding company that controls one or more WFIs and does not control any other type of bank (other than a credit card bank, a limited purpose trust company, or Edge or Agreement Corporation) or a savings association. The company also must be substantially engaged in the securities business, or have been a bank holding company on the date of enactment of the Act. A company is substantially engaged in the securities business if the company owns one or more SEC-registered brokers or dealers and either (1) derives more than 35 percent of its annual consolidated net revenues from effecting transactions in or buying and selling securities as a broker or dealer, or (2) controls brokers or dealers that have total consolidated equity capital and qualifying subordinated debt of more than $750,000,000 (provided such equity capital and qualifying subordinated debt does not thereafter fall below $500,000,000).

b. Allocation of primary supervisory responsibility

The SEC is granted primary supervisory responsibility for investment bank holding companies that control WFIs that are small in both total and relative size. Specifically, the SEC is granted primary supervisory authority for any investment bank holding company that is substantially engaged in the securities business and controls one or more WFIs that have, in the aggregate, consolidated risk-weighted assets of less than $15 billion and annual gross revenues that represent less than 25 percent of the consolidated annual

gross revenues of the company. Title II of the Act creates a new section 17(i) of the Exchange Act, which mirrors section 10 of the HCA, governing the supervision of SEC-supervised investment bank holding companies by the SEC. All other investment bank holding companies are supervised by the Federal Reserve Board under section 10 of the HCA. Section 131 provides that SEC-supervised investment bank holding companies shall be considered bank holding companies only for certain provisions of the HCA, the FDIA, and the Bank Holding Company Act Amendments of 1970. Section 131 also permits an SEC-supervised investment bank holding company to voluntarily elect to become supervised by the Federal Reserve Board and to revoke such an election.

c. Federal Reserve Board supervised investment bank holding companies

Section 131 establishes the provisions governing the reporting, examination, and capital requirements for Federal Reserve Board supervised investment bank holding companies. The Federal Reserve Board may require such a company and any subsidiary to submit reports to inform the Federal Reserve Board of the company's or subsidiary's activities, financial condition, policies, risk-management systems, and transactions with affiliated depository institutions. The Federal Reserve Board also may require reports to keep it informed regarding the compliance of a company or its subsidiaries with the HCA and related regulations and orders. The Federal Reserve Board is required to accept, to the fullest extent possible, reports submitted to other Federal or State supervisors or appropriate self-regulatory organizations. The Federal Reserve Board may grant exemptions from its reporting requirements to any company or class of companies. In determining whether to grant such an exemption, the Federal Reserve Board must consider, among other factors, the primary business of the company, the nature and extent of the regulation of the company's activities, and whether the requested information is available from other domestic or foreign regulatory agencies.

The Federal Reserve Board is permitted to examine a Federal Reserve Board supervised investment bank holding company or any subsidiary to monitor compliance with: (1) the HCA and the laws governing transactions and relationships with affiliated depository institutions; (2) the company's or subsidiary's operations or financial condition; and (3) the risks within the holding company system that may affect an affiliated depository institution and the systems for controlling such risks. The Federal Reserve Board must, to the fullest extent possible, limit the focus and scope of any examination to the holding company itself and any subsidiary that for specified reasons could have a materially adverse effect on a depository institution affiliate of the company. In addition, the Federal Reserve Board must, to the fullest extent possible, use reports of examinations made by other Federal banking agencies, the SEC, and State insurance regulators.

The Federal Reserve Board is authorized to adopt capital adequacy rules or guidelines for Federal Reserve Board supervised investment bank holding companies. Any such capital requirements must be based on appropriate risk-weighting considerations and

must focus on the use by holding companies of so-called "double leverage," that is debt and other liabilities incurred by a company to fund investments in subsidiaries. The Federal Reserve Board may not impose any capital adequacy requirement on a nondepository subsidiary that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority. The Federal Reserve Board also may not impose capital adequacy rules on a non-depository subsidiary that is registered as an investment adviser with the SEC with respect to such subsidiary's investment advisory or incidental activities. Furthermore, the Federal Reserve Board must take full account of the capital requirements imposed on a nondepository subsidiary by such a Federal or State authority and industry norms for capitalization of unregulated subsidiaries.

d. Limited nonfinancial investments and activities

Section 131(d) allows a Federal Reserve Board supervised investment bank holding company to engage in a limited "basket" of nonfinancial activities, provided that the aggregate revenue derived from all such activities and of all companies engaged in such activities does not exceed 5 percent of the holding company's consolidated gross revenue. For purposes of determining compliance with this limitation, the revenues of all activities conducted or companies held pursuant to the grandfather rights established by section 131 must be included in the "basket." In addition, an investment bank holding company may not acquire the shares of a nonfinancial company that has consolidated assets of $750,000,000 or more at the time of the acquisition. The Federal Reserve Board, in consultation with the SEC, must submit a report to the Congress regarding the nonfinancial activities and affiliations permitted by this limited "basket" (and the parallel basket in section 17(i) of the Exchange Act for SEC supervised investment bank holding companies) not later than 5 years after the date of enactment of the Act.

Companies that become investment bank holding companies may continue to engage in any activity, or control shares of a company engaged in any activity, that the company was engaged in or held on the date of enactment of the Act. These grandfathered investments and activities may not be expanded through a merger, consolidation, or any other type of business combination. An investment bank holding company that engages in any activity or holds shares pursuant to the 5 percent basket or the grandfather rights conferred under section 131(d) may not take advantage of the similar basket or grandfather rights provided in section 6(f) of the HCA, which permit eligible financial holding companies to retain a limited amount of nonfinancial activities.

Section 131 permits an investment bank holding company to engage in, or own shares of a company lawfully engaged in, commodity investment and trading activities if the holding company was predominantly engaged in the securities business in the United States as of January 1, 1997, and was engaged in such commodity investment and trading activities in the United States on that date. The aggregate annual gross revenue from such commodity activities, however, may not exceed 5 percent of the capital of the investment bank holding company.

Section 2(a)(1)(A) of the Commodity Exchange Act confers upon the CFTC exclusive jurisdiction with respect to accounts, agreements, and transactions involving contracts of sale of a commodity for future delivery. Nothing contained in section 131 of H.R. 10 is intended to supersede or limit the jurisdiction at any time conferred on the CFTC, or to restrict the CFTC from carrying out its duties and responsibilities under the Commodity Exchange Act or any other law.

Under section 131, the subsidiary WFIs of an investment bank holding company may not engage in cross marketing activities with any nonfinancial company whose shares are held under the 5 percent basket provision, the grandfather provision or the commodities provision.

e. Foreign banks

Foreign banks are not eligible for supervision as investment bank holding companies under section 10 of the HCA. A foreign bank that maintains no banking presence in the United States other than uninsured branches, agencies or commercial lending companies, however, may request a determination from the Federal Reserve Board that it be treated as an investment bank holding company for purposes of the provisions allowing investment bank holding companies to make limited nonfinancial investments affiliations.

To be eligible for treatment as an investment bank holding company, a foreign bank must control a securities company engaged in the underwriting of equity securities and its affiliates must not hold any deposits insured by the FDIC. In addition, the foreign bank must meet risk-based capital standards comparable to those required for a WFI. The Act provides that a foreign bank that is treated as an investment bank holding company shall be considered a WFI for certain specified purposes. In addition, if a foreign bank is treated as an investment bank holding company, then Sections 23A and 23B of the Federal Reserve Act apply to any transactions between the bank's branches, agencies and commercial lending affiliates and any nonfinancial company owned by the foreign bank pursuant to section 10(d) of the HCA. A foreign bank that is treated as an investment bank holding company is not eligible for any exception provided in section 2(h) of the HCA from that Act's nonbanking restrictions.

The Act does not limit in any way the Federal Reserve Board's authority under the International Banking Act of 1987 with respect to the regulation, supervision, or examination of foreign banks.

f. Federal Reserve Board backup authority for SEC supervised investment holding companies

The SEC has primary authority for enforcing the provisions of the banking laws and section 17(i) of the Exchange Act as they apply to SEC supervised investment bank holding companies. Section 131 grants the Federal Reserve Board backup authority to take any action authorized by the HCA or the FDIA against an SEC supervised investment bank holding company, a subsidiary of such a company, or any institution-affiliated party of such a company or subsidiary for the purpose of enforcing compliance with the

HCA, the Bank Holding Company Act Amendments of 1970, section 17(i) of the Exchange Act, the FDIA, or the Federal Reserve Act. The Federal Reserve Board must provide the SEC with prior notice of any proposed action, unless immediate action is necessary or appropriate in light of exigent circumstances.

The Federal Reserve Board also is granted backup authority to examine an SEC supervised investment bank holding company or subsidiary to monitor and enforce compliance with the HCA, section 17(i) of the Exchange Act, and all other Federal statutes for which the Federal Reserve Board has enforcement authority. The Federal Reserve Board must restrict the focus of any such exam in light of the limited purpose of the Federal Reserve Board's backup examination authority. The Federal Reserve Board also must, to the fullest extent possible, defer to the reports of examinations of a broker or dealer by the SEC or of an insurance company by the relevant State insurance authority.

Section 131 also requires that the Federal Reserve Board and the Comptroller of the Currency provide the SEC, at its request, any reports or records that the Federal Reserve Board or the Comptroller has available concerning a WFI controlled by an SEC supervised investment bank holding company.

g. Enforcement authority over uninsured State banks

Section 131(b) provides that the provisions of the banking laws authorizing the Federal Reserve Board to take enforcement actions, including section 3(u), subsections (j) and (k) of section 7, and subsections (b) through (n), (s), (u), and (v) of section 8 of the FDIA, apply to an uninsured State bank in the same manner that they apply to insured State member banks.

Section 132. Authorization to release reports

Section 132 authorizes the Federal Reserve Board to release reports of examination or other confidential supervisory information concerning any entity that the Federal Reserve Board has authority to examine to any Federal or State supervisory or regulatory authorities, the officers, directors or receivers of the entity, or any other person deemed proper by the Federal Reserve Board. Section 132 also amends the Right to Financial Privacy Act to treat the CFTC in a manner consistent with the other financial supervisory agencies.

Section 133. Conforming amendments

Section 133 defines the terms "wholesale financial institution", "Commission", "depository institution", and "insured bank" for purposes of the HCA and amends the definition of the term "bank" in the HCA to include WFIs. Section 3(e) is amended to permit a bank holding company to control a WFI even though the deposits of such institutions are not insured by the FDIC. The Federal Reserve Board also is designated as the appropriate Federal banking agency for a WFI under the FDIA.

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

Section 136. Wholesale financial institutions

Section 136(a) authorizes the establishment of WFIs. A WFI may be either a national bank or a State member bank. A national bank is required to apply to the Comptroller for permission to operate as a WFI. The approval of the Federal Reserve Board is required for a State bank to operate as a WFI. Section 136 also authorizes State banking authorities to grant a charter to a WFI notwithstanding any State law requiring that a State bank obtain deposit insurance.

Section 136(b) amends the Federal Reserve Act by adding a new section 9B that requires all WFIs to become members of the Federal Reserve System. All WFIs are subject to the provisions of Section 9B and to the other provisions of the Federal Reserve Act to the same extent and in the same manner as if the WFI were a State member insured bank, except that a WFI may only terminate membership on the terms and conditions set by the Federal Reserve Board and with prior written approval of the Federal Reserve Board.

Section 9B also contains special capital requirements applicable to wholesale financial institutions. The Federal Reserve Board is authorized to adopt capital requirements for WFIs, taking into account their uninsured status and providing for the safe and sound operation of such institutions without undue risk to creditors or other persons, including Federal Reserve Banks, engaged in transactions with the institution.

Section 9B also makes WFIs subject to the prompt corrective action provisions contained in section 38 of the FDIA, the enforcement provisions contained in the FDIA, the Bank Merger Act, and the International Lending Supervision Act. WFIs may branch to the extent permitted by the Federal Reserve Board and with the approval of the Federal Reserve Board or the Comptroller. State chartered WFIs are treated as State member insured banks for purposes of the provisions of Section 27 of the FDIA governing the activities of interstate branches and are granted all the rights, powers, privileges and immunities of national banks.

A WFI may not receive initial deposits of $100,000 or less other than on an incidental and occasional basis. Deposits of that amount received on an incidental basis may not represent more than 5 percent of the institution's total deposits and are subject to regulations prescribed by the Federal Reserve Board. In addition, deposits of a WFI may not be insured by the FDIC.

The Federal Reserve Board is authorized to adopt for WFIs: (1) limitations on transactions with affiliates to prevent the transfer or risk to the deposit insurance funds or an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank; (2) special clearing balances; and (3) any additional requirements that the Federal Reserve Board determines necessary or appropriate to achieve designated purposes. Transactions between an insured bank and an affiliated WFI are not eligible for the sister bank exemption from Section 23A of the Federal Reserve Act. The Federal Reserve Board also may grant a WFI exemptions from any requirement applicable to member banks.

Any WFI that is controlled by an investment bank holding company must remain well capitalized and well managed. If a WFI is not well capitalized or well managed, any company that controls the WFI must execute an agreement with the Federal Reserve Board to restore the WFI to well capitalized and well managed status. The Federal Reserve Board may order an investment bank holding company, whether such company is supervised by the Federal Reserve Board or the SEC, to divest its subsidiary depository institutions if the company does not execute an acceptable agreement with the Federal Reserve Board or restore the WFI to well capitalized or well managed status within specified time periods. The Federal Reserve Board must notify the SEC prior to ordering an SEC supervised investment bank holding company to divest control of a subsidiary WFI.

In order to permit existing insured banks to become WFIs, section 136(c) adds a new section 8A to the FDIA. Section 8A permits a State-chartered or national bank to terminate its status as an insured institution after providing 6 months prior notice to the FDIC, the Federal Reserve Board, and depositors. An insured bank may terminate its insurance if the deposit insurance fund of which the bank is a member has met or exceeds its designated reserve ratio and the bank pays an exit fee to the FDIC, or the bank receives regulatory approval and pays the appropriate exit fee. A depository institution that voluntarily terminates its deposit insurance under section 8A must either become a WFI or terminate all deposit-taking activities. Transition arrangements are established that permit previously insured deposits (less withdrawals) of a bank that terminates its insured status under section 8A to remain insured for up to 2 years.

Subtitle E—Streamlining Antitrust Review of Bank Acquisitions and Mergers

Section 141. Amendments to the Bank Holding Company Act of 1956

Section 141 requires a copy of an application and other materials submitted to the Federal Reserve Board under section 3 of the HCA to be filed by the applicant with the Department of Justice. The company also must file a copy of such materials with the Federal Trade Commission (FTC) if the transaction also involves the acquisition of nonbanking assets or shares under section 4 or section 6 of the HCA. Section 141 also removes "competitive factors" from the list of factors that the Federal Reserve Board must consider when reviewing a proposed acquisition or merger under section 3. The Federal Reserve Board will continue to consider the financial and managerial resources of the companies and banks involved in the transaction as well as the convenience and needs of the community to be served. However, the Department of Justice or the FTC, as appropriate, will have the sole responsibility for reviewing the competitive effects of the transaction under the antitrust laws.

Section 141 retains the requirement that the Federal Reserve Board notify the Department of Justice of approval of acquisitions and mergers. While the 30-day post-approval waiting period is also

retained, the Department of Justice and the FTC are given authority to prescribe a shorter waiting period. The automatic stay and immunity provisions remain in place. Section 141 also deletes the provisions requiring a court to: (1) conduct a de novo review of the antitrust issues presented; and (2) apply the same standards applied by the Federal Reserve Board in approving a transaction if any acquisition, merger or consolidation is challenged on competitive grounds. The same standards that apply under the antitrust laws apply to transactions approved under section 3 of the HCA. In addition, the statutory authority of the Federal Reserve Board and the appropriate State bank authority to appear in cases where the Department of Justice challenges a bank acquisition or merger is eliminated.

Section 142. Amendments to the Federal Deposit Insurance Act to vest in the Attorney General sole responsibility for antitrust review of depository institution mergers

Section 142 removes the authority of the Federal banking agencies to review competitive factors in a transaction under the Bank Merger Act. The Federal banking agencies will continue to consider the financial and managerial resources of the institutions involved in the transaction as well as the convenience and needs of the community to be served. The Department of Justice will have the sole responsibility for reviewing the competitive effects of the transaction under the antitrust laws. As in the proposed amendments to the HCA, section 142 leaves in place the 30-day post approval waiting period for proposed mergers but allows the Department of Justice to prescribe a shorter period. The Federal banking agencies can permit immediate consummation of a transaction upon a determination that such action is necessary to prevent a probable bank failure. The automatic stay and immunity provisions are maintained.

Section 142 also deletes the provisions of the Bank Merger Act requiring a court to: (1) conduct a de novo review of the antitrust issues presented, and (2) apply the same standards the appropriate Federal banking agency applied in approving a transaction if any acquisition, merger or consolidation is challenged under the antitrust laws. In addition, the statutory authority of the appropriate Federal banking agency and the appropriate State bank authority to appear in cases where the Department of Justice challenges a bank acquisition or merger is eliminated. Applicants are required to file copies of any application materials submitted to an appropriate Federal banking agency with the Department of Justice.

Section 143. Information filed by depository institutions; interagency data sharing

Section 143 provides that applications filed under section 3 of the HCA or the Bank Merger Act must contain a description of the likely competitive effects of the proposed transaction. The appropriate Federal banking agencies, with the concurrence of the Department of Justice and the FTC, must establish the form and content of the competitive effects section of an application. If the Department of Justice or the FTC notifies the appropriate Federal banking agency that the competitive effects section of an applica-

tion is incomplete, the agency must suspend processing of the application unless action is necessary in light of emergency circumstances or the probable failure of a bank involved. Section 143 also requires that the Federal banking agencies share data on the antitrust implications of a banking acquisition with the Department of Justice and the FTC where permissible under law.

Section 144. Applicability of antitrust laws

No provision of subtitle E affects the applicability of the Federal or State antitrust laws.

Section 145. Clarification of status of subsidiaries and affiliates

Section 145 clarifies that any affiliate of a bank or savings association that is not itself a bank or a savings association shall not be considered a bank for purposes of the Federal Trade Commission Act or any other law enforced by the FTC.

Section 146. Effective date

Subtitle E is effective 6 months after the date of enactment of the Act.

Subtitle F —Applying the Principles of National Treatment and Equality of Competitive Opportunity to Foreign Banks and Foreign Financial Institutions

Section 151. Applying the principles of national treatment and equality of competitive opportunity to foreign banks that are financial bank holding companies

Section 151 amends section 8(c) of the International Banking Act of 1978 (IBA) to provide that, if a foreign bank or foreign company becomes a financial holding company, the foreign bank or foreign company shall forfeit its grandfather rights under the IBA with respect to all financial activities. The IBA provided such grandfather rights because of the activity restrictions contained in current law. With the repeal of these restrictions, foreign banks with grandfathered financial affiliates would be permitted to retain these affiliates under section 6 of the HCA, subject to the same terms and conditions that govern the ownership of such companies by domestic banking organizations. In order to provide both competitive equality between domestic and foreign banks and fairness to the foreign banks that have relied for many years on their grandfathering rights, the foreign bank is granted two years in which to have an application approved under section 6. Failing such approval within this time period, the Federal Reserve Board may impose restrictions and requirements comparable to those on a financial holding company, including a requirement that the activities be conducted in compliance with any prudential safeguards established under section 5(h) of the HCA.

Section 152. Applying the principles of national treatment and equality of competitive opportunity to foreign banks and foreign financial institutions that are wholesale financial institutions

Section 152 amends section 8A of the FDIA (as added by this Act) to allow an insured branch of a foreign bank to voluntarily ter-

minate its deposit insurance in the same manner and to the same extent as insured State and national banks. This section is intended to allow foreign banks to convert their insured branches to WFIs.

Subtitle G—Effective Date of Title

Section 171. Effective date

Except as otherwise provided, the effective date for Title I is 270 days after the date of enactment of the Act.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

Subtitle A amends the definitions of "broker" and "dealer" in the Securities Exchange Act of 1934 (Exchange Act) to eliminate antiquated broad exceptions for banks. In place of the broad exceptions, subtitle A provides circumscribed exceptions from the definitions for specific activities. These exceptions reflect important considerations such as investor protection. Subtitle A also contains a provision setting out a grievance process for customers who purchase or sell securities directly through banks pursuant to the exemptions. Finally, subtitle A includes a record keeping requirement for banks and an information sharing provision to allow banking regulators and the Commission to determine whether banks are complying with the terms of the exceptions and exemptions.

Section 201. Definition of broker

Section 3(a)(4) of the Exchange Act currently excludes banks from its definition of "broker" (15 U.S.C. § 78c(a)(4)). As a result, banks that directly conduct brokerage activities are not required to register as broker-dealers or to satisfy most other requirements applicable to SEC-registered brokers under the Exchange Act.

Section 201 amends the Exchange Act's definition of "broker" to include banks, subject to certain exceptions. As a general matter, a bank will be considered a "broker" under the Exchange Act if it is engaged in the business of effecting transactions in securities for the account of others.

Section 201, however, contains ten circumscribed exceptions. If a bank limits its brokerage activities to the activities described in these exceptions, then the bank will not be subject to broker-dealer registration and regulation under the Exchange Act. These exceptions recognize that it may not be necessary, under certain conditions, to require a bank to register as a broker-dealer. In particular, registration may not be required because the conditions imposed on the excepted activities are adequately tailored to protect investors and ensure competitive fairness among different types of financial services providers.

1. Third Party Brokerage Arrangements

Currently, banks sell securities to bank customers in one of three ways: (1) by contracting with registered broker-dealers; (2) by registering broker-dealer subsidiaries or affiliates; or (3) by selling securities directly through bank employees who are neither reg-

istered as broker-dealers nor licensed as registered representatives of a broker-dealer. Unregistered bank employees may sell securities directly to customers because, under existing law, banks are specifically excluded from broker-dealer registration under the Federal securities laws.

Section 201 provides that a bank will not be considered a "broker" if it offers brokerage services to its customers on its premises pursuant to a contract or other arrangement with an affiliated or unaffiliated broker-dealer. This so-called "networking" provision is intended to ensure that investors who purchase securities from the broker-dealer on the bank's premises adequately understand the risks and are fully protected under the Federal securities laws. This exception follows a long line of SEC no-action letters.

The broker-dealer "networking" activities must be conducted at a location that is clearly identified and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank.

As part of these networking arrangements, banks frequently designate employees who become licensed registered representatives under the supervision of a broker-dealer for the purpose of conducting brokerage transactions. These employees, known as "dual employees," are associated persons of a broker-dealer and receive incentive compensation (i.e., compensation that depends on the successful outcome of the transaction) from the broker-dealer. Such employees are subject to regulation and disciplinary actions by the securities self-regulatory organizations and the SEC in connection with their brokerage activities.

Bank employees who are not dual employees may only perform clerical or ministerial functions and may not receive incentive compensation. Bank employees may, however, receive a one-time nominal referral fee of a fixed dollar amount that does not depend on whether the referral results in a transaction. Permissible clerical or ministerial functions include scheduling appointments with an associated person of a broker-dealer. In addition to their clerical or ministerial functions, bank employees also may forward customer funds or securities and may describe in general terms the range of investments available. Bank employees who are not registered representatives, however, may not make general or specific investment recommendations regarding securities, qualify a customer as eligible to purchase securities, or accept orders for securities.

In order to ensure that an investor has Securities Investor Protection Corporation (SIPC) protection for the securities that he or she purchases—protection that is available from a broker-dealer but not from a bank—the broker-dealer that is part of a networking arrangement must carry the investor's account. Section 201 also contains provisions governing advertising and promotional materials and disclosure requirements.

2. Trust Activities

A bank will not be considered a "broker" if it conducts brokerage transactions in a trustee capacity and is primarily compensated based on a percentage of assets under management. Under this exception, a bank must act as trustee and be fully subject to applicable Federal and State trust laws. To be eligible for any part of the

exception for trust and fiduciary activities, bank regulators must regulate and examine these activities as part of their routine bank trust department inspections.

An insured bank will also not be considered a "broker" if, subject to certain conditions, it conducts brokerage transactions in a fiduciary capacity in its trust department in connection with the provision of investment advice or the exercise of investment discretion. The bank cannot: (1) publicly solicit this brokerage business, except in connection with advertising its other trust activities; (2) receive incentive compensation; or (3) use brokerage employees to effect transactions.

The trust exception would permit banks to continue to sell securities in their historic role as trustees. Banks (i) acting as "bona fide" trustees, or (ii) who engage in fiduciary activities in their trust departments could sell securities without being subject to Federal securities regulation. These activities are subject to Federal and State trust law and are examined by trust examiners, which provides bank trust department customers with some basic protections and, therefore, mitigates concerns that would otherwise exist because of the lack of Federal securities law protections for these customers.

3. Permissible Securities Transactions

A bank will not be considered a "broker" if it conducts brokerage transactions in commercial paper, bankers acceptances, commercial bills, or "exempted securities" under the Exchange Act. For purposes of this exception, municipal revenue bonds are not treated as "exempted securities." In addition, a bank will not be considered a "broker" if it effects transactions in qualified Canadian government obligations under the regulatory framework applicable to U.S. government securities, securities of the North American Development Bank, or Brady Bonds.

4. Employee and Shareholder Benefit Plans

A bank will not be considered a "broker" if it conducts brokerage transactions for employee and shareholder benefit plans if it does not solicit investors and is compensated based on a flat per order fee designed to recover the bank's incremental costs directly attributable to such transactions. In addition, a bank will not be considered a "broker" if it conducts brokerage transactions for an issuer's current shareholders in a dividend reinvestment and stock purchase plan, and the bank (1) does not solicit investors, (2) is compensated based on a flat per order fee designed to recover the bank's incremental costs directly attributable to such transactions, and (3) does not net shareholders' buy and sell orders.

The exception would permit banks, as they currently do today, to act as agents for issuers that want to sell securities directly to their current employees and shareholders. Currently, issuers pay banks to establish these programs, and banks do not receive "success" or incentive- based fees from the employees or shareholders. Banks that act like broker-dealers—i.e., soliciting public customers—should be treated the same as all other broker-dealers, so that financial services providers of different types can compete fairly. In addition, investors dealing with entities that charge success-

based fees should be protected from overreaching and conflicts of interest by the Federal securities laws.

5. Sweep Accounts

A bank will not be considered a "broker" if it conducts brokerage transactions for the purpose of investing or reinvesting depositors' funds in money market accounts. The exception has the effect of permitting banks to continue "sweeping" deposits from depository accounts into money market accounts.

6. Affiliate Transactions

A bank will not be considered a "broker" if it conducts brokerage transactions for the account of any affiliate of the bank, as defined in section 2 of the Bank Holding Company Act, other than an affiliate that is a broker-dealer or an affiliate that is engaged in merchant banking as defined in section 6(h) of the Bank Holding Company Act.

7. Private Securities Offerings

A bank that has not been affiliated with a broker-dealer for more than one year will not be considered a "broker" if it privately places securities exclusively to qualified investors. "Qualified investors" include mutual funds, hedge funds, banks, thrifts, business development companies, small business investment companies licensed under the Small Business Investment Act, certain employee benefit plans, trusts managed by any of the preceding investors, market intermediaries exempted under the Investment Company Act, associated persons of a broker-dealer (other than natural persons), and foreign banks. The SEC may expand the list of qualified investors, provided it considers such factors as the person's financial sophistication, net worth, and knowledge and experience in financial matters. In the interest of investor protection, the SEC may not add natural persons to the list of qualified investors. This exception does not apply to a bank that is affiliated with a broker-dealer for more than a year. As described more fully below, section 203 of Title I directs registered securities associations to grandfather certain bank employees who have participated in sales of privately placed securities in the six months before the Act's enactment.

Private placement of securities is a traditional broker-dealer activity, requiring broker- dealer regulation. The fact that private placements are an "agency" activity may mean it does not pose a risk to the bank, but that begs the question of how the people who invest in these securities should be protected. They should receive the same protections regardless of where they choose to do business. An untrained bank employee does not provide the same protections to an investor as a trained securities professional, registered and regulated under the Federal securities laws. Private placements are not immune from abuse by those who sell them: for example, the Prudential Securities Inc. debacle involved private placements. The Act does permit small banks to continue to privately place securities with qualified investors, if they do not have affiliated or subsidiary broker-dealers, in recognition of the needs of smaller communities serviced by smaller banks.

8. Safekeeping and Custody Services

A bank will not be considered a "broker" if it engages in the customary banking activities of providing safekeeping and custody services to its customers with respect to securities pledged by one customer to another customer in connection with repurchase or similar financing arrangements. The bank may also facilitate the transfer of funds or securities, as a custodian or clearing agency, in connection with the clearance and settlement of its customers' transactions in securities, and effect or facilitate lending or borrowing of securities in connection with repurchase or similar financing arrangements or clearance and settlement activities. Banks that perform functions customarily performed by clearing brokers, clearing agencies, or transfer agents in connection with securities other than exempted securities, however, must register as clearing agencies, or transfer agents as required under the Exchange Act.

This subsection is designed to allow banks to perform the functions of a custodian or clearing agency without falling within the definition of a broker under this bill. The performance of certain of those functions (e.g., purchasing securities to cover shortfalls or liquidating collateral for the bank's own account) would not constitute the business of "effecting transactions in securities for the account of others," and thus would not subject a bank to treatment as a broker under this bill. Other functions (e.g., effecting delivery or receipt of securities as a custodian or clearing agency in the clearance and settlement of a contract to purchase, sell, pledge or repo securities) are specifically exempted because banks already conduct such activities today without being subject to regulation as brokers. Finally, a bank would not fall within the definition of a broker solely because it performed certain limited execution functions that are incidental to safekeeping, custody or clearing agency activities (e.g., selling securities dividends on custody securities or satisfying a guarantee or investing cash that serves as collateral on a securities loan). It would not, however, be incidental to safekeeping, custody or clearing agency activities for a bank to provide general securities execution services or investment advice to a custody or clearing agency customer solely because of that status (including to a self-directed IRA account).

9. Banking Products

A bank may continue to engage in brokerage transactions in products defined as "banking products" in section 3(a)(54) of the Exchange Act. "Banking products" include deposit accounts, letters of credit and loans made by a bank, credit card debit accounts, loan participations that are sold to qualified investors or other investors who have the financial sophistication and opportunity to review any material information, and derivative instruments involving foreign currencies (except options on foreign currencies traded on a national securities exchange). The classification of a product as a banking product does not imply that such product is or is not a security, or an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

10. De Minimis Transactions

A bank will be excepted from the definition of a "broker" if it effects less than 500 securities transactions in any calendar year (in addition to other excepted bank activities). In order to prevent this exception from being used to evade the Federal securities laws, bank employees who also are employees of a broker-dealer may not claim the exception for any transactions that they effect.

Section 202. Definition of dealer

Section 3(a)(5) of the Exchange Act currently excludes banks from the definition of "dealer" (15 U.S.C. § 78c(a)(5)). As a general matter, a bank will be deemed a "dealer" if it is engaged in the business of buying and selling securities for its own account, through a broker or otherwise. Section 202 amends section 3(a)(5) to include banks within the general definition of dealer, but creates five specific exceptions for certain activities. Section 202 preserves the existing distinction between dealer activities and non-dealer principal transactions, including bank investment and trading portfolio transactions for its own account, as reflected in current SEC interpretive positions regarding dealers.

1. Permissible Securities Transactions

A bank will not be considered a "dealer" if it buys or sells commercial paper, bankers acceptances, commercial bills, or "exempted securities" under the Exchange Act. For purposes of this exemption, municipal revenue bonds are not treated as "exempted securities." In addition, this exemption extends to a bank if it buys or sells qualified Canadian government obligations under the regulatory framework applicable to U.S. government securities, securities of the North American Development Bank, or Brady Bonds.

2. Investment, Trustee, and Fiduciary Transactions

A bank will not be considered a "dealer" because it buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as trustee or fiduciary. This mirrors existing law distinguishing between investors and dealers, and is limited to the portfolio trading of the bank and accounts for which it makes investment decisions.

3. Asset-Backed Transactions

A bank will not be considered a "dealer" if it issues or sells to qualified investors, securities that are exclusively backed by or represent an interest in obligations or pools of obligations predominantly originated by the bank, a syndicate of banks of which the bank is a member, or an affiliate of the bank (other than a broker or dealer). This has the effect of generally limiting availability of this exception to securities originated by banks on a syndicate- by-syndicate basis.

4. Transactions in Banking Products

A bank will not be considered a "dealer" if it buys or sells banking products as defined in new section 3(a)(54) of the Exchange Act, discussed below. "Banking products" include deposit accounts, letters of credit issued by a bank and loans made by a bank, credit

card debit accounts, loan participations that are sold to qualified investors or other investors who have the financial sophistication and opportunity to review any material information, and derivative instruments involving foreign currencies (except options on foreign currencies traded on a national securities exchange).

5. Derivative Instruments

The Committee recognizes the useful risk-management and investment tools that derivatives provide, and has crafted this exception to ensure that banks can continue to act in their traditional, historical role as counterparties, or dealers, in derivatives transactions with sophisticated counterparties. The exception permits banks to continue to book all securities derivatives transactions in the bank, and to sell them to sophisticated institutions without being subject to the Federal securities laws. Where a derivative transaction is not a security, and is not settled by the delivery of a security, the exception provides that the Federal securities laws will not apply. When banks sell complex *securities* derivatives products to individuals and smaller institutions, however, while banks may continue to act as underwriter, or counterparty, to the transaction, the Federal securities laws, including broker training and suitability requirements, would apply, and the transaction would have to be effected by a broker. Where the derivatives are or involve the delivery of a security, retail and smaller institutional clients should receive the investor protections provided under the Federal securities laws. In addition, broker-dealers compete with banks to provide these same services, and must comply with Federal securities regulation; thus, this exception also creates a level playing field for entities engaged in the same activity.

A bank will not be considered a "dealer" if it engages in certain derivative transactions. First, if the bank acts as counterparty in any derivatives transaction with a qualified investor (or a corporation, limited liability company, or partnership having at least $10 million in investments) and the transaction is settled in cash, the bank would not be deemed a "dealer" or be required to effect the transaction through a registered broker-dealer affiliate. Transactions settled by delivering securities, however, would have to be done through a registered broker-dealer. Second, if the derivative is a security or the bank settles the transaction by delivering securities, and the transaction is effected with a person who is not a qualified investor (or a corporation, limited liability company, or partnership having at least $10 million in investments), the bank would be deemed a "dealer" or be required to effect the transaction through a broker-dealer affiliate. Third, if the derivative is neither a security nor provides for settlement by the delivery of securities, the bank would not be deemed a "dealer" and would be permitted to engage in the transaction directly. Banks also would be permitted to act as counterparty in transactions involving derivatives that are, or that require the delivery of, U.S. government securities without being deemed a "dealer."

"Derivative instruments" are defined to include any individually negotiated contract, agreement, warrant, note, or option that is partially or wholly based on the value of, any interest in, or any quantitative measure, or the occurrence of any event relating to,

one or more commodities, securities, currencies, interest or other rates, indices, or other assets. Equity and credit swaps are not treated separately under the exemption for derivative instruments. Their treatment will depend on whether the swaps may be deemed a security or require settlement by delivering one or more securities. Whether a swap or other derivative product is a security for Exchange Act purposes depends on whether it is an option on a security or satisfies established legal tests for determining whether a financial product is a security.

"Qualified investors" include mutual funds, hedge funds, banks, thrifts, business development companies, small business investment companies licensed under the Small Business Investment Act, certain employee benefit plans, trusts managed by any of the preceding investors, market intermediaries exempted under the Investment Company Act, associated persons of a broker-dealer (other than natural persons), and foreign banks. The SEC may expand the list of qualified investors, provided it considers such factors as the person's financial sophistication, net worth, and knowledge and experience in financial matters. The SEC may not add natural persons to the list of qualified investors.

Section 203. Registration for sales of private securities offerings

Section 203 amends section 15A of the Exchange Act, which sets out the requirements to be a registered securities association, to add new subsection (j). This new subsection directs a registered securities association to create a limited qualification category, without a testing requirement, for certain associated persons of members who effect private placement sales. Associated persons in this category must have been bank employees engaged in private placement sales in the six months before this bill is enacted.

Section 204. Grievance process

Section 204 amends section 18 of the Federal Deposit Insurance Act by adding new subsection (s). This new subsection directs the appropriate Federal banking agencies to jointly establish procedures and facilities for receiving and expeditiously processing complaints against any bank or bank employee arising in connection with the purchase or sale of a security by a customer. These procedures and facilities are for use by customers at their election and are not intended for use by banks having grievances against customers who have purchased or sold securities.

The Federal banking agencies are expressly directed to: (1) establish a group, unit or bureau in each agency to receive customers' complaints; (2) develop and establish procedures for investigating complaints; (3) develop and establish procedures for informing customers of their rights in connection with complaints; and (4) develop and establishing procedures for resolving complaints, including procedures for the recovery of losses to the extent appropriate.

This grievance process is in addition to, and not in lieu of, any other remedies available under law.

Section 205. Information sharing

Section 205 also amends section 18 of the Federal Deposit Insurance Act by adding new subsection (t). This new subsection re-

quires each appropriate Federal banking agency, after consultation with and consideration of the Commission's views, to establish record keeping requirements for banks that are relying on the exceptions and exemptions from the definitions of "broker" and "dealer" in sections 3(a)(4) and 3(a)(5) of the Exchange Act made in sections 201 and 202 of Title I.

These record keeping requirements must result in records that are sufficient to demonstrate compliance with the terms of the exceptions and exemptions. The records kept must be made available by the appropriate Federal banking agency upon the Commission's request.

Section 206. Banking products, derivative instrument, and qualified investor defined

Section 206 amends subsection 3(a) of the Exchange Act to add paragraphs (54), (55) and (56) defining, respectively, "banking products", "derivative instrument", and "qualified investor."

New paragraph (54) defines "banking product" as: (1) a deposit account, savings account certificate of deposit, or other deposit instrument issued by a bank; (2) a banker's acceptance; (3) loans and letters of credit issued by a bank; (4) a debit account at a bank arising from a credit card or similar arrangement; (5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that (i) is sold to qualified investors or (ii) is sold by an employee of a bank who is not also a broker-dealer employee and sales are limited to persons who have the opportunity to review and assess material information, including information about the borrower's creditworthiness, and who, based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available; or (6) any derivative instrument, whether or not individually negotiated, involving or relating to foreign currencies, except options on foreign currencies that trade on a national securities exchange.

The definition of "banking products" includes loans made by a bank. The exception for loans made by a bank is only available for loans that are not securities under the Exchange Act. What constitutes a loan that is not a security is determined by reference to the Supreme Court's decision in *Reves* v. *Emst & Young*, 494 U.S. 56 (1990), which sets out a "family resemblance test" for notes to determine whether they are securities.

In Reves a list of notes previously deemed not to be securities is recognized. These include: (1) the note delivered in consumer financing; (2) the note secured by a mortgage on a home; (3) the short-term note secured by a lien on a small business or some of its assets; (4) the note evidencing a character loan to a bank customer; (5) short-term notes secured by an assignment of accounts receivable; (6) a note which simply formalizes as an open-account debt incurred in the ordinary course of business; and (7) notes evidencing loans by commercial banks for current operations.

For other instruments, *Reves* presumes that every note is a security and then applies the "family resemblance" test to determine whether the presumption is correct. The presumption is rebutted if a note bears a strong resemblance to any instrument on a list of

notes that have previously been deemed not to be securities, or, if upon applying the test, it is determined that the note should be added to the list. *Reves* identifies four factors to consider in determining whether a note should be added to the list. These four factors are: (1) the motivations that would prompt a reasonable buyer and seller to enter into the transaction; (2) the plan of distribution of the instrument; (3) the reasonable expectations of the investing public; and (4) whether some factor, such as the existence of another regulatory scheme, significantly reduces the risk of the instrument, thereby rendering application of the securities laws unnecessary.

Accordingly, the loans included in the definition of "banking products" are limited to instruments that would not be deemed to be securities under the *Reves* family resemblance test—either because they are already included on the *Reves* list of non-securities or because they would be appropriately added to the *Reves* list of non-securities under the four-factor test. In general, the *Reves* list of non-securities is limited to instruments that are purchased, delivered, or sold in connection with consumer or commercial financing transactions. In contrast, notes that have characteristics typically associated with an investment purpose would be deemed securities under the Federal securities laws, and therefore outside the scope of the term "banking product."

A similar analysis was used to create the conditions for sales of loan participations by banks.

Nothing in paragraph (54) is intended to imply that any "banking product" is, or is not, a security, or an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

New paragraph (55) defines "derivative instrument" as any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure, or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include a banking product.

As in paragraph (54), nothing in paragraph (55) is intended to imply that any "derivative instrument" is or is not a security, or an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

New paragraph (56) defines "qualified investor." The definition includes (1) registered investment companies; (2) issuers eligible for any exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act; (3) banks, savings and loan associations, brokers, dealers, insurance companies and business development companies (as defined in section 2(a)(48) of the Investment Company Act); (4) small business investment companies licensed by the Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; (5) State sponsored employee benefit plans, and certain other employee benefit plans within the meaning of the Employee Retirement Income Securities Act of 1974, other than individual retirement accounts; (6) certain trusts; (7) market intermediaries exempted under section 3(c)(2) of the Investment Company Act of

1940; (8) associated persons of a broker or dealer that are not natural persons; and (9) foreign banks (as defined in section 1(b)(7) of the International Banking Act of 1978).

Section 207. Government securities defined

Section 207 amends paragraph (42) of subsection 3(a) of the Exchange Act to add new subparagraph (E). This new subparagraph includes in the definition of "government securities," for purposes of section 15C of the Exchange Act as applied to banks, qualified Canadian government obligations as defined in section 5136 of the Revised Statutes.

Section 208. Effective date

Section 208 establishes the effective date of this subtitle as 270 days from the date of enactment.

Subtitle B—Bank Investment Company Activities

Subtitle B of the title addresses many of the concerns raised by the increased involvement of banks in investment company activities. Banks are now significant participants in the mutual fund industry. Because this was not the case when the Investment Company Act and the Investment Advisers Act were enacted, these statutes currently do not address many of the concerns that may arise when banks provide investment management and related services to investment companies. The bill addresses these concerns by, among other things, broadening the definition of "investment adviser" in the Investment Advisers Act to include banks that advise investment companies, and including specific provisions to address the conflicts of interest that may arise when banks provide investment management and related services to funds. In addition, the bill addresses potential customer confusion that can occur when investors purchase shares of an investment company on bank premises, or shares of an investment company that has a name similar to that of a bank. Finally, the bill addresses the circumstances under which bank-maintained common trust funds are exempt from the securities laws.

Section 211. Custody of investment company assets by affiliated bank

The Investment Company Act does not currently limit the ability of a bank to serve as custodian of the assets of an affiliated management investment company or unit investment trust. Although the Investment Company Act gives the Commission general rulemaking authority regarding investment company custodial arrangements, section 211(a) and (b) of the bill clarifies and confirms that this rulemaking authority extends to custodial arrangements involving affiliated banks.

Section 211(a) of the bill amends section 17(f) of the Investment Company Act (15 U.S.C. § 80a–17(f)) to expressly authorize the Commission to adopt rules and issue orders prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, sponsor, or principal underwriter of such a company, may serve as the investment company's custodian.

Section 26(a)(1) of the Investment Company Act (15 U.S.C. § 80a–26(a)(1)) requires a unit investment trust to designate as trustee or custodian a bank meeting certain qualifications. Section 211(b) of the bill amends section 26(a) to expressly authorize the Commission to adopt rules and issue orders prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter or depositor of a unit investment trust, may serve as trustee or custodian of the trust.

Section 36(a) of the Investment Company Act authorizes the Commission to bring an action in Federal court against an officer, director, investment adviser, depositor, or principal underwriter of an investment company that engages in personal misconduct that constitutes a breach of fiduciary duty owed to the investment company. Section 211(c) of the bill extends section 36(a) to cover misconduct by an investment company custodian.

Section 212. Lending to an affiliated investment company

Section 17(a) of the Investment Company Act makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of that person, among other things, to borrow money or other property from the company, except as otherwise permitted under the Act. The Investment Company Act, however, does not restrict a person's ability to make a loan to an affiliated investment company. Loans to an investment company from an affiliate carry the potential for overreaching. The affiliate could, for example, charge the company an above-market interest rate. To address the potential for overreaching, section 212 of the bill amends section 17(a) to also make it unlawful for any affiliated person of an investment company, or any affiliated person of that person, to loan money or other property to the company in contravention of any rules or orders that the Commission may prescribe or issue.

Section 213. Independent directors

The Investment Company Act deems certain persons with a material relationship to an investment company or to a company's investment adviser or principal underwriter to be "interested persons" of those entities. The Act limits the number of interested persons who may serve on the board of an investment company and uses the interested person concept to minimize conflicts of interests. For example, the Act requires a fund's investment advisory contract to be approved annually by a majority of directors who are not interested persons of the fund or the fund's adviser.

Section 2(A)(19)(A) of the Investment Company Act (15 U.S.C. § 80a–2(A)(19)(A)) currently defines "interested person" of an investment company to include six categories of persons with specified relationships to the company. Subparagraph (v) of the section currently defines "interested person" of an investment company to include any registered broker or dealer, or any affiliated person of the broker or dealer. The definition is over-inclusive because it applies to any registered broker or dealer, even one with no relationship with the fund. The Commission has recognized this problem and addressed it in part by adopting rule 2a19–1 under the Investment Company Act, which States, in relevant part, that a director

of an investment company will not be considered an interested person of the company, or its adviser or principal underwriter, solely because the director is a registered broker or dealer or an affiliated person of a broker or dealer, provided that certain conditions are met.

Section 213(a) largely codifies rule 2a19–1 by deleting the reference to "registered broker or dealer" in subparagraph (v) of section 2(a)(19)(A) and substituting "any person or any affiliated person of a person that, during the six-month period preceding the determination of whether the person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for the investment company or a related investment company or account. Section 213(a) also adds a new subparagraph (vi) to section 2(a)(19)(A) that defines "interested person" to include any person, or any affiliated person of a person that, during the six month period preceding the determination of whether the person is an interested person, has loaned money or other property to the investment company or a related investment company or account. Section 213(b) amends section 2(a)(19)(B) of the Investment Company Act, which is the definition of "interested person" of an investment adviser or principal underwriter of an investment company, to mirror the changes made by section 213(a) to section 2(a)(19)(A) of the Investment Company Act.

Section 10(c) of the Investment Company Act (15 U.S.C. § 80a–10(c)) currently prohibits a registered investment company from having a majority of its board of directors comprised of individuals who are officers, directors, or employees of any one bank. Section 213(c) of the bill amends section 10(c) to extend this prohibition to any one bank, together with its affiliates and subsidiaries, or any one bank holding company, together with its affiliates and subsidiaries. This provision would strengthen the independence of a fund's board of directors.

To accommodate those funds that will have to change the composition of their boards as a result of sections 213(a), (b), and (c), section 213(d) provides that the amendments made by section 213 shall not take effect until one year after the enactment of Subtitle B.

Section 214. Additional SEC disclosure authority

Section 214 of the bill is intended to address potential customer confusion that can occur when investors purchase shares of an investment company on bank premises, or shares of an investment company that has a name similar to that of a bank. Section 214 amends section 35(a) of the Investment Company Act to prohibit any person issuing or selling the securities of a registered investment company from representing or implying that the company or securities are insured by the Federal Deposit Insurance Corporation (FDIC) or are guaranteed by or otherwise an obligation of any insured depository institution.

Section 214 further amends section 35(a) by requiring any person issuing or selling the securities of a registered investment company that is advised by or sold through a bank to disclose prominently that an investment in the company is not insured by the FDIC or

any other government agency. Section 214 authorizes the Commission to adopt rules and issue orders prescribing the manner in which such disclosure must be provided. Even if the Commission has not adopted rules under this section, however, bank advised investment companies still are required to disclose that an investment in the company is not insured by the FDIC or any other government agency.

Section 215. Definition of broker under the Investment Company Act of 1940

Section 215 of the bill replaces the definition of "broker" in section 2(a)(6) of the Investment Company Act with a reference to the definition of "broker" in the Exchange Act. The amended definition continues to exclude any person that would be deemed a broker solely because the person is an underwriter for one or more investment companies.

Section 216. Definition of dealer under the Investment Company Act of 1940

Section 216 of the bill similarly replaces the definition of "dealer" in section 2(a)(11) of the Investment Company Act with a reference to the definition of "dealer" in the Exchange Act. The amended definition continues to exclude insurance companies and investment companies.

Section 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies

Section 202(a)(11) of the Investment Advisers Act (15 U.S.C. § 80b–202(a)(11)) currently excludes banks and bank holding companies from the definition of "investment adviser." Section 217(a) of the bill amends section 202(a)(11) to include within the definition of "investment adviser" any bank or bank holding company that serves as investment adviser to a registered investment company. This amendment is intended to make banks and bank holding companies that advise investment companies subject to the same regulatory scheme as other investment company advisers. It also is intended to help the Commission more effectively protect the interests of shareholders in bank-advised investment companies.[2]

A bank may establish a "separately identifiable department or division" (SID) to act as investment adviser to a registered investment company, in which case only the SID, and not the bank, would be deemed an investment adviser under the Investment Advisers Act. Section 217(b) of the bill amends section 202(a) of the

[2] Section 217 protects shareholders of bank-advised investment companies by giving the Commission access to records and information necessary to ensure that bank advisers comply with the Federal securities laws. Currently, when SEC examiners examine an investment company that is advised by a bank that is not a registered investment adviser, the Commission staff does not have the authority to require the bank to produce trading records related to advisory customers other than registered investment companies. This limitation makes it difficult to uncover certain practices that may violate the Federal securities laws. For example, a bank that advises an investment company could allocate more profitable trades to bank trust accounts and less profitable trades to the investment company. Bank advisory personnel also could engage in front running the securities transactions of the investment company by trading the same securities for their personal accounts. If all banks that advise investment companies were subject to the Advisers Act, the staff would have access to books and records that might reveal these practices.

Investment Advisers Act to add a definition of a "separately identifiable department or division" of a bank.

Section 218. Definition of broker under the Investment Advisers Act of 1940

Section 218 of the bill replaces the definition of "broker" in section 202(a)(3) of the Investment Advisers Act (15 U.S.C. § 80b–2(a)(3)) with a reference to the definition of "broker" in the Exchange Act.

Section 219. Definition of dealer under the Investment Advisers Act of 1940

Section 219 of the bill similarly replaces the definition of "dealer" in section 202(a)(7) of the Investment Advisers Act (15 U.S.C § 80b–2(a)(7)) with a reference to the definition of "dealer" in the Exchange Act. The amended definition continues to exclude insurance companies and investment companies.

Section 220. Interagency consultation

Section 220 of the bill adds a new section 210A to the Investment Advisers Act that requires the appropriate Federal banking agency to share with the Commission, and the Commission to share with the banking agency, upon request, the results of any examination, reports, records, or other information regarding the investment advisory activities of any bank holding company, bank, or SID that is registered as an investment adviser under the Investment Advisers Act. If a bank holding company or bank has a subsidiary or a SID registered as an investment adviser under the Investment Advisers Act, the section requires that the banking agency share with the Commission, upon request, the results of any examination, reports, records, or other information regarding the bank holding company or bank. Section 220 also clarifies that it does not in any way limit the authority of the banking agency to regulate the bank holding company, bank, or SID.

Section 220 is intended to assist the Commission and the Federal banking agencies in obtaining information from one another that may be necessary or helpful in carrying out their statutory responsibilities. The section also is intended to provide the Commission with access to information regarding a bank holding company or bank that, although not itself registered as an investment adviser under the Investment Advisers Act, has a subsidiary or SID that is registered as an investment adviser under the Investment Advisers Act.[3]

Section 221. Treatment of bank common trust funds

The Federal securities laws currently exempt interests in common trust funds from the registration requirements of the Securities Act and exclude common trust funds from the definition of investment company under the Investment Company Act. In addition, because interests in common trust funds are exempted securities under the Exchange Act, persons effecting transactions in these interests need not register as broker-dealers. All three stat-

[3] See supra note 1.

utes limit the exception to a common trust fund or similar fund maintained by a bank exclusively for the collective investment or reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian.

Section 221 of the bill largely codifies a long-standing Commission position that the exception from the securities laws available to a bank common trust fund applies only when the underlying trust relationship is created for bona fide fiduciary purposes, and when the fund is operated for the administrative convenience of the bank in a manner incidental to the bank's traditional trust department activities and not as a vehicle for general investment by the public.

Section 221 amends the common trust fund exception in section 3(c)(3) of the Investment Company Act (15 U.S.C. § 80a–3(c)(3)) so that it applies only to a common trust fund that meets three conditions. First, the common trust fund must be employed solely as an administrative convenience for the management of accounts created and maintained for fiduciary purposes. Second, interests in the fund may not be advertised or offered for sale to the public, except in connection with generic advertising of the bank's overall fiduciary services. Third, the common trust fund may not charge fees and expenses in contravention of fiduciary principles established under applicable Federal or State law. Section 221 also amends the exemptions provided to common trust funds by section 3(a)(2) of the Securities Act (15 U.S.C. § 77c(a)(2)) and section 3(a)(12)(A)(iii) of the Exchange Act (15 U.S.C. § 78c(a)(12)(A)(iii)) to reference the conditions set forth in section 3(c)(3) of the Investment Company Act.

Section 222. Investment advisers prohibited from having controlling interest in registered investment company

Section 222 of the bill amends section 15 of the Investment Company Act to add a new subsection (g) that is intended to address certain conflicts that may arise when an investment adviser to an investment company, or an affiliated person of the adviser, has voting control over the investment company through shares held in a trustee or fiduciary capacity. To ensure that the adviser does not use its fiduciary authority to further its own interests (such as by voting to perpetuate itself as adviser to the investment company), section 222 requires the fiduciary to follow certain procedures when voting investment company shares.

If the adviser has a controlling interest in the investment company through shares held in a trustee or fiduciary capacity on behalf of an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA), section 222 requires that the adviser transfer the power to vote the shares of the investment company to another fiduciary of the plan that is not an affiliated person of the investment adviser, or an affiliated person of such a person. Transferring the power to vote to another plan fiduciary (such as the plan administrator or plan sponsor) that will exercise voting authority in accordance with ERISA requirements is neither an improper delegation of voting authority nor an improper exercise of voting responsibilities by the investment adviser in violation of ERISA.

If the adviser has a controlling interest in the investment company through shares held in a trustee or fiduciary capacity for persons other than employee benefit plans subject to ERISA, section 222 provides the adviser with several options for voting the shares. First, the adviser may transfer the power to vote the shares of the company to: (i) the beneficial owners of the shares; (ii) another fiduciary who is not an affiliated person of the adviser, or an affiliated person of such person; or (iii) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of the adviser or an affiliated person of such person. Second, the adviser may vote the shares held by it in the same proportion as shares held by all other shareholders of the investment company. Finally, the adviser may vote the shares in accordance with such rules or orders as the Commission may prescribe or issue.

Under well-established principles of fiduciary law, a fiduciary has an obligation to vote shares held by it in a fiduciary capacity in the best interests of the shareholders, without regard to the fiduciary's own interests. Transferring the power to vote the shares to another person therefore might be deemed to be an improper delegation or abdication of the fiduciary's responsibilities. Similar concerns are presented by proportionate voting of shares held in a fiduciary capacity. For this reason, section 222 includes a safe harbor that provides that an investment adviser to a registered investment company that has voting control over the investment company through shares held in a fiduciary capacity (for persons other than employee benefit plans subject to ERISA) will not be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely because it voted shares, or transferred the power to vote shares, in accordance with the standards set forth in new section 15(g) of the Investment Company Act.

Section 222 further provides that the voting procedures described above shall not apply when the investment company consists solely of assets held in a trustee or fiduciary capacity. Fiduciary customers have adequate protection under applicable State and Federal fiduciary law. The voting procedures prescribed by section 222 are therefore meant only to protect those investors that are not fiduciary customers of the investment adviser, and these protections are not necessary when the investment company consists solely of assets held in a trustee or fiduciary capacity.

Section 223. Conforming change in definition

Section 223 of the bill amends the definition of "bank" in section 2(a)(5) of the Investment Company Act by deleting the reference to "a banking institution organized under the laws of the United States", and substituting a reference to "a depository institution", as defined in the Federal Deposit Insurance Act, or "a branch or agency of a foreign bank," as those terms are defined in the International Banking Act of 1978. The Exchange Act continues to define banks by reference to organization under the laws of the United States.

Section 224. Conforming amendment

Section 224 of the bill amends section 202 of the Investment Advisers Act to add a new subsection (c) that requires that when the Commission, as part of a rulemaking, considers whether an action is necessary or appropriate in the public interest, it consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. This provision is intended to incorporate into the Investment Advisers Act a standard for Commission rulemaking similar to those that were added to the Securities Act, the Exchange Act, and the Investment Company Act as part of the Securities Markets Improvement Act of 1996.

Section 225. Effective date

Subtitle B shall become effective 90 days after the date of enactment of this Act.

Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

Subtitle C creates a new investment bank holding company structure under the Federal securities laws. This subtitle is designed to implement a new concept of Securities and Exchange Commission (Commission) supervision of holding companies with affiliated wholesale financial institutions (WFIs) that are primarily in the securities business. All other holding companies affiliated with WFIs will be subject to Federal Reserve Federal Reserve Board regulation under a similar regulatory scheme contained in Title I. Broker-dealer holding companies that do not have an affiliated WFI do not automatically have holding company regulation, but may voluntarily elect Commission supervision as an investment bank holding company under this subtitle. Under this voluntary supervision, the Commission will have greater authority to oversee the entire entity, thus satisfying the expectations of foreign jurisdictions and some counterparties that the entity will be subject to consolidated supervision. This option should be useful for investment bank holding companies that do business in foreign jurisdictions that require consolidated holding company supervision.

As more fully detailed elsewhere, investment bank holding companies that buy or affiliate with WFIs cannot be affiliated with any other bank (other than credit card banks, Edge Act corporations, and State-chartered trust companies). The WFI itself is regulated by banking regulators for safety and soundness purposes as provided in Title I. Investment bank holding companies with affiliated WFIs are authorized to engage in a wide range of "financial activities," to continue existing commercial activities, and to engage in a limited amount of new commercial activities. Under the subtitle, the Commission will be responsible for supervising investment bank holding companies with affiliated WFIs (i) that meet criteria demonstrating that they are primarily engaged in the securities business, and (ii) whose WFI is small in size relative to size of the overall holding company.

Broker-dealer holding companies without affiliated WFIs that voluntarily "opt" into the investment bank holding company super-

visory scheme will remain free, of course, to engage in—or affiliate with entities engaged in—unlimited commercial activities.

Section 231. Supervision of investment bank holding companies by the Securities and Exchange Commission

Generally, section 231(a) of the bill amends section 17 of the Securities Exchange Act by adding new subsections (i), (j) and (k).

New subsection 17(i) creates the investment bank holding company, which is defined in an amendment to section 3 of the Securities Exchange Act as (i) any person, other than a natural person, that owns or controls one or more brokers or dealers, and (ii) any associated person of an investment bank holding company. This new entity is subject to a scheme of mandatory Federal Reserve Federal Reserve Board or Commission supervision if it is affiliated with a bank that is a WFI. New subsection 17(i) also prescribes a scheme of voluntary Commission oversight for investment bank holding companies that have no affiliated banks but desire consolidated holding company oversight.

Subtitle C is not intended to affect the supervisory scheme described in Title I for any financial holding company or bank holding company that has both insured bank affiliates and broker or dealer affiliates.

a. Mandatory supervision of investment bank holding companies that control one or more WFIs

Paragraph (1) of new subsection 17(i) provides that the Commission is the supervisory regulator of an investment bank holding company that controls one or more WFIs and (i) the WFI has in the aggregate less than $15,000,000,000 in consolidated risk-weighted assets, and annual gross revenues that are less than 25 percent of the company's consolidated annual gross revenues, and (ii) that does not control any insured bank other than credit card banks, Edge Act corporations, and State chartered trust companies, or any other bank (other than a WFI), or does not control any savings association.

Consolidated risk-weighed assets for purposes of this provision are based on the average consolidated risk-weighted assets of the institution for the four previous calendar quarters and include only those risk-weighted claims on affiliates that, in the aggregate, exceed the aggregate risk-weighted claims of affiliates (other than WFI subsidiaries) on the WFI.

b. Voluntary supervision of investment bank holding companies that do not have affiliated WFIs

Paragraph (2) of new subsection 17(i) permits any investment bank holding company that does not have an affiliated WFI to elect Commission supervision. This supervision may be useful or necessary to engage in financial activities globally, and therefore may be a desirable option for those investment bank holding companies that operate on a global basis or with global parties.

An investment bank holding company that does not have a WFI and voluntarily elects Commission supervision under paragraph (2) will be subject to the same supervisory scheme as WFI-affiliated investment bank holding companies, with two significant differences.

Most important, investment bank holding companies that do not have affiliated WFIs are not subject to any limitations on their commercial activities. In addition, they will have the option of voluntary withdrawal from supervision, as described in detail below.

c. Withdrawals

Paragraph (3) of new subsection (i) requires investment bank holding companies with affiliated WFIs that are supervised by the Commission and that cease to meet any one of the requirements described above to file a notice of withdrawal from Commission supervision. A Commission supervised investment bank holding company with an affiliated WFI also may voluntarily withdraw from Commission supervision. In either case, the Commission, after consultation with the Federal Reserve Federal Reserve Board, may impose any necessary terms and conditions on the withdrawal deemed necessary or appropriate. After withdrawal from Commission supervision, an investment bank holding company with a WFI must be supervised by the Federal Reserve Federal Reserve Board.

Under paragraph (4), investment bank holding companies voluntarily supervised by the Commission may elect at any time not to be supervised by filing with the Commission a notice of withdrawal. In addition, the Commission may discontinue supervision over any voluntarily supervised investment bank holding company under certain circumstances. For example, if the Commission finds that the investment bank holding company no longer exists or is no longer an investment bank holding company, or that supervision is not consistent with the purposes of section 17(i), the Commission may discontinue its supervision.

d. Scheme of regulation

When the Commission is the primary supervisor of an investment bank holding company (whether or not affiliated with a WFI), the investment bank holding company and its affiliates are subject to Commission record keeping and reporting requirements, and to Commission examinations as set forth in paragraph (5).

1. Record Keeping and Reporting

Paragraph (5) of new subsection 17(i) contains the record keeping, reporting, and examination requirements applicable to investment bank holding companies supervised by the Commission. The Commission, in its new role as a holding company supervisor, may adopt rules necessary to provide information about each supervised investment bank holding company's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between affiliated brokers, dealers or WFIs. The Commission also may adopt rules necessary to permit it to ascertain the extent to which each investment bank holding company and its affiliates are complying with the Securities Exchange Act.

The Commission may require supervised investment bank holding companies to keep records containing the information necessary to inform the Commission as described above, and to make and provide reports to the Commission. Reports may include financial statements, capital assessments, reports by independent auditors

regarding compliance with risk management and internal control objectives, and reports regarding such company's or affiliate's compliance with the Exchange Act and regulations.

To minimize duplicative and burdensome regulatory requirements, the Commission is expressly directed to use, to the fullest extent possible, reports that a supervised investment bank holding company or its affiliates have provided to another appropriate regulatory agency or Self regulatory Organization (SRO). Supervised investment bank holding companies and their affiliates must provide reports prepared for other regulators to the Commission, when requested.

2. Examinations

The Commission may examine any supervised investment bank holding company and any affiliate to gather information about the operations and financial condition of the investment bank holding company and its affiliates, the risks within the investment bank holding company that may affect any affiliated broker-dealer or WFI, and the systems for monitoring such risks. Examinations also may be conducted to monitor compliance with new subsection 17(i), applicable restrictions on transactions between broker-dealers or WFIs and their affiliates, and the Bank Secrecy Act. Examinations must be restricted to the investment bank holding company and any affiliate that could have a material adverse effect on the condition of any affiliated broker-dealer or WFI. The Commission must, to the fullest extent possible, notify the appropriate regulatory agency prior to examining a WFI. In addition, the Commission must use, to the fullest extent possible, the examination reports made by other "functional regulators" such as the relevant bank regulator (for an affiliated WFI, credit card bank, Edge Act corporation, or State-chartered trust company) or the State insurance regulator (in the case of an affiliated insurance company).

3. Capital Adequacy

In addition, the Commission may adopt capital adequacy rules for investment bank holding companies if the Commission finds that such rules are necessary to adequately supervise investment bank holding companies and their broker, dealer or WFI affiliates pursuant to paragraph (6). The Committee does not encourage the Commission to exercise this authority. If, however, the Commission decides that capital adequacy rules are necessary, it must consider the use of double leverage, base any capital ratio on appropriate risk-weighting considerations, refrain from imposing any capital requirement on a nonbanking affiliate that is in compliance with the capital requirement of another Federal regulator or State insurance regulator, and take account of the capital requirements of other Federal regulators and State insurance regulators. The Commission should incorporate internal risk management models into any capital adequacy rules it adopts for investment bank holding companies. The Commission, in adopting any capital adequacy rules for investment bank holding companies with affiliated WFIs, must consult with the Federal Reserve Federal Reserve Board, in an effort to maintain consistency in regulation by the Commission and the Federal Reserve Federal Reserve Board.

e. Permissible activities for investment bank holding companies with affiliated WFIs

Investment bank holding companies with affiliated WFIs, regardless of their supervisory regulator, may engage in a much broader group of activities than previously permitted to bank holding companies. The reasons for this change are described in detail in the discussion of Title I. Generally, paragraph (7) sets forth certain permitted financial activities, as well as describing commercial and certain other permissible activities.

Generally, pursuant to subparagraph (7)(A) of new subsection 17(i), Commission supervised investment bank holding companies with affiliated WFIs may engage in activities that are described in detail in subparagraphs (B), (C), (D), (E) and (G).

1. Financial Activities

New subparagraph (7)(B) specifies "financial activities" as activities that are permissible for a bank holding company under section 4(c)(1) through (14) of the Bank Holding Company Act of 1956 and activities that are financial in nature, incidental to such financial activities or activities the SEC determines by rule or regulation are financial in nature or incidental to such activities. Activities that are considered to be financial in nature or incidental to such activities include: (i) lending, exchanging, transmitting, investing or safeguarding money or securities; (ii) insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal agent, or broker for purposes of the foregoing; (iii) providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940); (iv) issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly; (v) underwriting, dealing in, or making a market in securities; (vi) activities permitted bank holding companies abroad; (vii) merchant banking activities; (viii) insurance investment activities; and (ix) any other activity that the Federal Reserve Federal Reserve Board has determined by order or regulation in effect on the date that the Act is enacted determined is so closely related to banking or managing or controlling banks as to be a proper incident to banking.

The Commission is directed to adopt rules defining the following activities as financial in nature or incidental to activities that are financial in nature: (i) lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities; (ii) providing any advice or other instrumentality for transferring money or other financial assets; and (iii) arranging, effecting or facilitating financial transactions for the accounts of third parties.

The Commission's authority to interpret the terms "financial in nature" and "incidental to financial in nature" mirrors similar authority provided to the Federal Reserve Federal Reserve Board in Title I for those investment bank holding companies under the Federal Reserve Board's supervision. To encourage consistency, the Commission must consult with the Federal Reserve Federal Reserve Board when exercising its authority under this paragraph. Similarly, the Federal Reserve Federal Reserve Board is required,

pursuant to parallel provisions in Title I, to consult with the Commission under the same circumstances. Such mutual consultation provisions are intended to maximize consistent interpretation of what activities are financial or incidental to financial activities and to maintain competitive equality for investment bank holding companies, regardless of supervisory regulator. Notably, any activity limitations imposed by the Commission and the Federal Reserve Federal Reserve Board are intended to be consistent, but not necessarily identical.

Commission supervised investment bank holding companies have, by definition, small affiliated WFIs and the holding companies' business is predominantly not banking. In addition, their affiliated WFIs are not protected by Federal deposit insurance. For this reason, Commission supervised investment bank holding companies do not need all the limitations imposed on Federal Reserve Federal Reserve Board supervised investment bank holding companies. The Committee expects the Commission to act to preserve the flexibility and ability to innovate that characterizes securities firms currently by responding in a timely manner to innovation in financial services. The Committee recognizes that the Commission, pursuant to its authority under this new subparagraph, may at times construe financial activities somewhat differently than the Federal Reserve Federal Reserve Board will under parallel provisions in Title I. For example, the Federal Reserve Federal Reserve Board may determine that certain activities, although having some relationship to finance, would pose a threat to the banking system if engaged in by investment bank holding companies with large WFIs. The Commission could determine, however, that the same activities would be acceptable for an investment bank holding company engaged predominantly in securities activities and affiliated with a small WFI. Of course, the Committee expects, and the subtitle mandates, that the Commission and the Federal Reserve Federal Reserve Board consult on such matters so that competitive concerns are taken into account.

2. Permissible Non-Financial Activities and Investments

All investment bank holding companies with affiliated WFIs, whether supervised by the Federal Reserve Federal Reserve Board or the Commission, may engage in non-financial activities, and may acquire and retain ownership and control of shares of any company engaged in a non-financial activity, subject to certain limitations enumerated in the bill. For Commission supervised investment bank holding companies, these limitations are set forth in subparagraph 17(i)(7)(C). In particular, (1) non-financial activities cannot account for more than 5 percent of the consolidated annual gross revenues of the investment bank holding company, (2) the consolidated assets of any non-financial company whose shares are acquired by the investment bank holding company are less than $750,000,000 at the time of the acquisition, and (3) the investment bank holding company must notify the Commission within 30 days of beginning a non-financial activity or acquiring ownership or control of a company engaged in non-financial activities.

Investment bank holding companies predominantly engaged in the securities business may have non-financial activities or affili-

ates that predate the date of enactment of this bill. These preexisting activities and affiliates are expressly grandfathered in subparagraph 17(i)(7)(D). An investment bank holding company can continue to engage in any non-financial activities or retain ownership and control of any non-financial affiliates after enactment of the bill, even if these activities and affiliates exceed the 5 percent limit (or the $750,000,000 cap on the size of non-financial affiliates) discussed above.

This grandfather limits affiliates engaged in non-financial activities, however, to the same activities that they engaged in on the date of enactment and other activities permissible under subsection 17(i). In addition, after the date of enactment of the bill, investment bank holding companies may not acquire assets of any company engaged in non-financial activities, except to the extent permitted in paragraph 17(i)(7)(C).

3. Commodity Activities

Subparagraph (E) of subsection 17(i) permits certain investment bank holding companies with affiliated WFIs that were predominantly engaged in securities activities in the United States on January 1, 1997, or any successors to such companies, to engage in, or directly or indirectly own shares of a company lawfully engaged in trading, sale or investment in commodities and underlying physical properties. In order to take advantage of this provision, the company, or a subsidiary of the company, must have been engaged directly, indirectly or through a subsidiary, in any of these activities on January 1, 1997.

An investment bank holding company's attributed aggregate investment in these activities may not exceed five percent of the holding company's capital. The Commission may, however, increase the percent of capital attributable to these activities, as the Commission considers appropriate, consistent with the Exchange Act. In addition, the Commission has rulemaking authority to implement this subparagraph.

Section 2(a)(1)(A) of the Commodity Exchange Act confers upon the Commodity Futures Trading Commission (CFTC) exclusive jurisdiction with respect to accounts, agreements, and transactions involving contracts of sale of a commodity for future delivery. Nothing contained in section 231 is intended to supersede or limit the jurisdiction at any time conferred on the CFTC, or to restrict the CFTC from carrying out its duties and responsibilities under the Commodity Exchange Act or any other law.

4. Cross-Marketing Restrictions

An investment bank holding company with an affiliated WFI may engage in somewhat more extensive activities than bank and financial holding companies. In particular, the level of permitted commercial activities for investment bank holding companies is substantially higher than the level for other bank- and financial holding companies. Regardless of the permitted activities of affiliates in an investment bank holding company, however, each affiliate should be functionally regulated, according to the services it offers. For this reason, subparagraph 17(i)(7)(F) prohibits affiliates and subsidiaries of Commission supervised investment bank hold-

ing companies with affiliated WFIs from offering or marketing any product or service of an affiliated WFI. Similarly, affiliated WFIs are prohibited from offering or marketing any product or service of any other affiliates within an investment bank holding company.

5. Developing Activities

In recognition of the rapid pace of change in the financial marketplace, and to protect innovation, subparagraph 17(i)(7)(G) permits Commission-supervised investment bank holding companies to engage in any activity that has not been expressly defined as "financial" by the Commission, up to 5 percent of each of the holding company's gross revenues, assets and capital, provided that the holding company reasonably concludes that the activity is financial in nature or incidental to financial activities and that the Commission has not previously reached a contrary determination as to the nature of the activity. Finally, any holding company relying on this subparagraph must provide the Commission with written notice describing the activity no later than 10 business days after beginning the activity or completing an acquisition of a company conducting the activity. Title I contains parallel provisions for financial holding companies and investment bank holding companies supervised by the Federal Reserve Federal Reserve Board.

f. Functional regulation of banking and insurance activities

Paragraph (8) of new subsection 17(i) requires that the Commission, in exercising its holding company supervisory authority, defer to the appropriate regulatory agency with regard to interpretations and enforcement of banking laws, and to the appropriate State insurance regulators with regard to interpretations and enforcement of applicable State insurance laws.

g. Federal Reserve Board backup authority

Paragraph (9) of new subsection 17(i) refers to backup examination and enforcement authority for Commission supervised investment bank holding companies affiliated with WFIs. The Commission is the primary regulator of these entities; however, section 10(e) of the Bank Holding Company Act gives the Federal Reserve Federal Reserve Board "back-up" examination and enforcement authority, subject to certain conditions and requirements set forth therein.

The Committee expects that this authority will be sparingly used. In particular, the Committee does not intend for the Federal Reserve Board to use this authority to bring actions using its "safety and soundness" authority against entities that are not covered by Federal deposit insurance.

h. Definitions

Paragraph (10) of new subsection 17(i) defines the terms "investment bank holding company", "supervised investment bank holding company", "substantially engaged in the securities business", "person associated with an investment bank holding company", and "associated person of an investment bank holding company." The term "wholesale financial institution" is defined by reference to the Federal Reserve Act. The terms "affiliate", "bank", "bank holding

company", "company", "control", "savings association", "well capitalized", and "well managed", are defined by reference to the Bank Holding Company Act. The term "insured bank" is defined by reference to the Federal Deposit Insurance Act, and the term "foreign bank" is defined by reference to the International Banking Act of 1978.

i. Securities and Exchange Commission backup authority

New subsection 17(j) gives the Commission backup authority to inspect any investment bank holding company that is supervised by the Federal Reserve Federal Reserve Board and any of its affiliates, to monitor and enforce compliance with the Federal securities laws. The Commission must limit its inspections to the transactions, policies, procedures and records reasonably necessary to monitor and enforce compliance with the Federal securities laws. To the fullest extent possible, the Commission must use examination reports made by banking and insurance regulators. The Commission also must, to the fullest extent possible, notify the appropriate regulatory agency prior to conducting an inspection of a WFI, Edge Act corporation, State-chartered trust company, or credit card bank pursuant to the authority granted in this subsection.

j. Exclusion from Freedom of Information Act

New subsection 17(k) provides authority for the Commission to limit disclosure, pursuant to the Freedom of Information Act, of information required to be reported to it under subsections (h), (i), or (j), or information supplied to it by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. This subsection expressly does not authorize the Commission to withhold information from Congress or from another Federal department or agency.

k. Conforming amendments

Section 231(b) of the bill contains amendments that conform other provisions of the Exchange Act to the amendments to section 17 made in section 231(a) of the bill. These conforming amendments include amendments to the definition of "appropriate regulatory agency" in section 3(a)(34) of the Exchange Act, the definitions of "person associated with a broker or dealer" or "associated person of a broker or dealer", and "person associated with a member" or "associated person of a member," in sections 3(a)(18) and 3(a)(21) of the Exchange Act, and to persons identified as "associated" in 15(b)(6)(A) of the Exchange Act. These amendments clarify the Commission's scope of jurisdiction over associated persons of investment bank holding companies, regardless of the supervisory regulator, for purposes of the Exchange Act. In particular, they clarify and confirm that the Commission may use its authority under the Exchange Act to bring actions against investment bank holding companies and their affiliates under provisions that provide it with authority to bring actions against "associated" persons.

In addition, the Right to Financial Privacy Act is amended to facilitate information-sharing between financial regulators.

Subtitle D—Study

Section 241. Study of the methods to inform investors and consumers of uninsured products

Section 241 requires the Comptroller General of the United States to perform a study on the usefulness, including the potential costs and benefits, of a government seal or logo for helping bank customers to better understand when they are purchasing a product that is not insured by the Federal Deposit Insurance Corporation, such as a security or insurance product.

Subtitle A amends the definitions of "broker" and "dealer" in the Securities Exchange Act of 1934 (Exchange Act) to eliminate antiquated broad exceptions for banks. In place of the broad exceptions, subtitle A provides circumscribed exceptions from the definitions for specific activities. These exceptions reflect important considerations such as investor protection. Subtitle A also contains a provision setting out a grievance process for customers who purchase or sell securities directly through banks pursuant to the exemptions. Finally, subtitle A includes a record keeping requirement for banks and an information sharing provision to allow banking regulators and the Commission to determine whether banks are complying with the terms of the exceptions and exemptions.

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

Section 301. State regulation of the business of insurance

Section 301 reaffirms that the McCarran-Ferguson Act remains the law of the United States.

Section 302. Mandatory insurance licensing requirements

Section 302 provides that no person or entity shall provide insurance in a State as principal or agent unless such person or entity is licensed by the appropriate insurance regulator of such State. The Committee does not intend to impose a licensing requirement for insurance principals or agents where none exists under applicable State law, such as for certain surplus or reinsurance surplus lines in some States.

Section 303. Functional regulation of insurance

Section 303 provides that the insurance sales activity of any person or entity shall be functionally regulated.

Section 304. Insurance underwriting in national banks

Section 304 prohibits national banks and their subsidiaries from underwriting insurance, except for authorized products. Authorized products are anything that (1) as of January 1, 1997 the Office of the Comptroller of the Currency (OCC) determined in writing that national banks may underwrite, or that national banks were in fact lawfully underwriting, and (2) where no court has overturned the OCCs determination, such products do not include title insurance or annuities. Insurance products are defined as anything regulated by the relevant State as insurance as of January 1, 1997, including

annuities. Products developed in the future are classified as insurance if so regulated by the State, so long as they are based on specified insurance concepts. However, future products that are core banking products, such as deposits, loans, letters of credits, trusts, derivatives, and guarantees are protected for banks, unless they are treated as insurance under the Internal Revenue Service tax code, in which case such products are insurance (except where the product is a bank extension of credit, derivative, or financial guaranty).

Section 305. New bank agency activities only through acquisition of existing licensed agents

Section 305 specifies that national banks and their subsidiaries that are not currently engaged in insurance agency activities in a State may only begin such activities by acquiring an existing agency that has been licensed in such State for at least two years.

Section 306. Title insurance activities of national banks and their affiliates

Section 306 generally prohibits a national bank and its subsidiaries from selling or underwriting title insurance, but grandfathers those activities which a bank (or its subsidiaries) were actively and lawfully engaged in before the date of enactment. However, if a national bank has an insurance underwriting affiliate, any title insurance underwriting or sales activities must be pushed out into such affiliate; a national bank without such an affiliate, but which has a subsidiary that underwrites insurance, must push out any title insurance activities into such subsidiary.

Section 306 also grants national banks and their subsidiaries the authority to sell title insurance in a State within which the State's own State-chartered banks were authorized under State law to sell title insurance as of January 1, 1997. However, such authority shall be subject to the same limitations and regulations as those applicable to any State-chartered bank in such State.

Section 307. Expedited and equalized dispute resolution for financial regulators

Section 307 establishes expedited and equalized dispute resolution mechanism to guide the courts in deciding a regulatory conflict between a State insurance regulator and Federal financial regulator as to whether a product is or is not insurance, or whether or not a State law regulating an insurance activity is or is not preempted by Federal law. Either party may file an action in the Federal District Court, with a judgment required to be rendered within 90 days. Any appeals of the District Court's ruling must be filed within ten days, and the United States Court of Appeals must render judgment within an additional 60 days. No action may be filed by either party after the later of (1) one year after the first public notice of a final regulation, or (2) six months after the regulation takes effect. The courts are directed to resolve the conflict based on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference. This paragraph is designed to mediate

disputes between insurance and banking regulation and is not intended to apply to issues regarding whether any product is a security.

Section 308. Consumer protection regulations

Section 308 directs the Federal banking regulators to issue final consumer protection regulations within one year, which shall govern the sale of insurance by any bank, or any person at or on behalf of a bank. The regulators shall provide additional consumer protections as they deem appropriate. The regulators shall also (after consulting with State insurance regulators) jointly prescribe regulations where appropriate, including extending such regulations to bank operating subsidiaries where necessary to ensure consumer protection. Such regulations shall include:

Anticoercion rules, prohibiting a bank from leading a consumer to believe that an extension of a loan is conditional upon the purchase of insurance from the bank or its affiliates.

Oral and written disclosures stating that the applicable insurance product is not FDIC insured; in the case of a variable annuity, that the product may involve an investment risk and may lose value; and that extension of credit may not be based on the purchase of insurance. Such disclosures shall be simple and easily understandable, such as "not FDIC-insured", "not guaranteed by the bank", or "may go down in value". Regulations may be modified according to whether the purchase is in person or by electronic media, as appropriate. An acknowledgment must be obtained from the consumer that the disclosure has been conveyed, either at the time of the disclosure or at the initial purchase of the product.

A clear delineation of the settings and circumstances under which insurance transactions should be physically segregated from areas where banks make loans or routinely accept deposits.

Standards limiting compensation for referrals by bank tellers and loan personnel. Such compensation may not exceed a one-time nominal fixed fee for each referral, which can not be contingent upon a successful transaction.

Standards requiring proper qualification and licensure under State law of those who solicit and sell insurance on behalf of or on the premises of a bank.

Prohibitions on discrimination against victims of domestic violence, preventing such status from being considered as a criterion in any insurance activity conducted by or at a bank, or by a bank representative. Such discrimination may only be allowed in accordance with State law—the Committee anticipates that some States may require affirmative discrimination on behalf of domestic violence victims. A sense of Congress is given that the States should adopt, within the next few years, regulations prohibiting insurance discrimination against domestic violence which are at least as strict as those under this subsection. The Committee further anticipates that the Federal banking regulators will coordinate their anti-domestic violence regulations with the States and the model laws being adopted by the National Association of Insurance Commissioners.

Establishment of a consumer grievance process to receive and investigate consumer complaints, inform consumers of their rights and address their concerns, and recover losses to the extent appropriate. The Committee anticipates that the consumer grievance process will be coordinated and implemented in cooperation with the appropriate State insurance regulators.

The regulations established pursuant to this section shall not affect the authority of other State or Federal agencies, and shall not be deemed as limiting any State law or regulation.

Section 309. Certain State affiliation laws preempted for insurance companies and affiliates

Section 309 preempts State laws that prevent or restrict insurance companies or insurance affiliates from becoming a financial holding company or acquiring control of a bank. The section further preempts State laws that limit the amount of an insurer's assets that can be invested in a bank, except that the insurer's State of domicile can limit such insurer's investments to 5 percent (or any higher threshold) of the insurer's admitted assets. If an insurance company is reorganizing from a mutual form into a stock company (including into a mutual holding company), then States other than the insurer's domicile may not prevent or restrict or require approval or formal review of such reorganization.

Subtitle B—Redomestication of Mutual Insurers

Section 311. General application

Section 311 limits application of the provisions of the Subtitle to those States which have not enacted, or promulgated through regulation, reasonable terms and conditions for allowing mutual insurance companies to reorganize into a mutual holding company.

Section 312. Redomestication of mutual insurers

Section 312 allows mutual insurance companies to redomesticate to another State and reorganize into a mutual holding company or stock company. All licenses of the insurer are preserved, and all outstanding policies, contracts, and forms remain in full force. A redomesticating company must provide notice to the State insurance regulators of each State for which the company is licensed.

A mutual insurance company may only redomesticate under this section if the State insurance regulator of the new (transferee) domicile affirmatively determines that the company's reorganization plan includes the following requirements:

The reorganization must be approved by a majority of the company's board of directors and voting policyholders, after notice and disclosure of the reorganization and its effects on policyholder contractual rights. The notice and disclosure, as well as a determination of ensuring a reasonable opportunity for policyholders to vote, shall be determined by the State insurance regulator of the transferee domicile.

The policyholders must have equivalent voting rights in the new mutual holding company as compared to the original mutual insurer. Any initial public offering of stock shall be in ac-

cordance with applicable securities laws and under the supervision of the State insurance regulator of the transferee domicile.

The new mutual holding company, for six months after the completion of an initial public offering, may not award any stock options or grants to its elected officers or directors or those of any of its reorganized stock insurance companies. An exception is created for awards or options entitled to policyholders, where such awards or options are approved by the State insurance regulators of the transferee domicile.

The reorganization preserves the contractual rights of the policyholders. The reorganization is approved as fair and equitable to the policyholders by the insurance regulator of the transferee domicile.

Section 313. Effect on State laws restricting redomestication

Section 313 preempts certain State laws (other than those of the transferee State domicile) which impede the redomestication or discriminate against the redomesticating company or its affiliates or policyholders. State laws are not preempted pertaining to unfair claim settlement practices, nondiscriminatory premiums and taxes, registration for service of legal documents and process, financial examination of the redomestication company if the insurance regulator of the new domicile has not scheduled such an examination to begin within a year of the redomestication, delinquency proceedings and voluntary dissolution proceedings, deceptive or false or fraudulent acts or practices, filing of petitions regarding financial impairment or hazardous condition of the redomesticating company, participation in insurance insolvency guaranty associations or other State insurance guaranty funds, or nondiscriminatory licensing requirements.

Section 314. Other provisions

Section 314 grants the United States District Courts exclusive jurisdiction over litigation arising under this Subtitle. It further allows any provision of the Subtitle that is held invalid to be severed independently.

Section 315. Definitions

Section 315 provides definitions for the purposes of this subtitle only.

Section 316. Effective date

Section 316 makes the Subtitle effective upon enactment.

Subtitle C—National Association of Registered Agents and Brokers

Section 321. State flexibility in multistate licensing reforms

Section 321 provides that the National Association of Registered Agents and Brokers (NARAB) shall only become effective if, within 3 years, a majority of the States have not enacted uniform or reciprocal laws for licensing of persons engaged in insurance activities.

Uniformity must include:

1. Criteria for licensed producers regarding integrity, personal qualifications, training, and experience, including any suitability training requirements.
2. Continuing education requirements.
3. Ethics course requirements.
4. Suitability requirements, including for annuity contracts (that are regulated at least in part as insurance by the States).
5. No other additional licensing requirement that limits a producer's activities based on residence or location of operations. States may continue, however, to impose countersignature requirements.

In the alternative, to meet the reciprocity requirement, a majority of States must:

1. Permit each other's resident licensed producers to conduct insurance activities to the same extent as allowed for resident producers, by imposing no administrative licensing procedures other than submitting—

A request for licensure.
A copy of the home State license application.
Proof of licensure and good standing in the resident State.
Payment of appropriate fees.

2. Accept the completion by the non-resident producer of the producer's home State's continuing education requirements.
3. Impose no limitations which discriminate against nonresidents (except for countersignature laws).

The National Association of Insurance Commissioners (NAIC) shall determine if either the uniformity or reciprocity standard has been met within three years of enactment. Exclusive jurisdiction over any challenge of such determination shall be given to the appropriate United States District Court. If a majority of the States fail to maintain either uniform or reciprocal standards, then NARAB shall be created within two years (from a determination or ruling regarding such failure), unless within such time a majority of the States reachieve the uniformity or reciprocity standards. State insurance laws and regulations shall not be required to be altered to meet the requirements of this section except to the extent that they are inconsistent with a specific requirement of the section.

Section 322. National association of registered agents and brokers

Section 322 provides that if the States do not enact uniform or reciprocal regulations in accordance with Section 321, then NARAB is created as a non-profit private corporation under the law of the District of Columbia.

Section 323. Purpose

Section 323 establishes that the purpose of NARAB is to provide for uniform licensing, appointment, and continuing education requirements for insurance agents. States shall continue unaffected in their capacity to license, supervise, enforce agency regulations regarding consumer protections and unfair trade practices, and impose countersignature laws.

Section 324. Relationship to the Federal Government

Section 324 directs that NARAB shall be subject to the supervision and oversight of the NAIC, and shall not be considered a Federal agency.

Section 325. Membership

Section 325 provides that membership in NARAB is voluntary and does not affect the rights of a producer under each individual State license. Any State-licensed insurance producer is eligible to join NARAB. A producer whose license has been suspended or revoked by a State within the previous three years is ineligible for NARAB membership, unless such suspension or revocation is overturned or such license renewed by the appropriate State. NARAB can establish other membership criteria or classes, which shall be based upon the highest levels of insurance producer qualifications set by the States on standards such as integrity, personal qualification, education, training, and experience. NARAB members shall continue to pay the appropriate fees required by each State in which they are licensed, and shall renew their membership annually. NARAB may inspect members records, and revoke a membership where appropriate. NARAB shall establish an Office of Consumer Complaints, which shall have a toll- free phone number to receive and investigate consumer complaints and recommend disciplinary actions. The Office shall maintain records of such complaints, which shall be made available to NAIC and individual State insurance regulators, and shall refer complaints, where appropriate, to such regulators.

Section 326. Board of directors

Section 326 provides that the NARAB Board shall consist of seven members appointed by the NAIC, at least four of whom must have significant experience with the regulation of commercial insurance lines in the 20 States in which the greatest total dollar amount of commercial line insurance is placed in the United States. Terms shall be for three years each, with a third to be replaced each year. If within the required two-year period for NARABs creation (two years from the provisions of Section 322 taking effect), the NAIC has still not appointed the initial board of directors for NARAB, then the initial directors shall be the State insurance regulators of the seven States with the greatest amount of commercial lines insurance. If a State insurance regulator declines to serve under this appointment procedure, then the State insurance regulator from the State with the next greatest amount of commercial lines insurance shall be appointed to serve. If fewer than seven State insurance regulators accept appointment under this procedure, then NARAB will be created without NAIC oversight pursuant to section 332.

Section 327. Officers

Section 327 provides that NARABs officers shall by elected or appointed for not more than three years. Only NAIC members may chair the board of directors (unless NARAB is established pursuant to section 332).

Section 328. Bylaws, rules, and disciplinary action

Section 328 directs NARAB to adopt bylaws and file them with NAIC. Proposed bylaws shall take effect 30 days after filing with NAIC, unless NAIC disapproves them (after a public hearing with notice and opportunity to participate) as being contrary to the public interest or requiring a public hearing. Any proposed rules shall be filed with NAIC, which shall either approve the rules as being in the public interest, or institute review proceedings including an opportunity for a hearing. The NAIC may allow any rule relating solely to the administration or organization of NARAB to take effect without a public hearing immediately upon filing. The NAIC may require NARAB to adopt or repeal additional bylaws or rules as it determines appropriate to the public interest. In a disciplinary action of one of its members, NARAB must provide notice to the member of the specific charges, and provide a recorded opportunity for a defense. If a disciplinary action is ordered, NARAB must notify NAIC, which may review and modify or overturn such action.

Section 329. Assessments

Section 329 allows NARAB to impose application and membership fees to cover its costs, including reimbursement to NAIC for its expenses. NARAB may not discriminate against smaller insurance producers in setting such fees. The Committee anticipates that NAIC shall determine whether a fee discriminates in such a manner.

Section 330. Functions of the NAIC

Section 330 allows NAIC, after notice and hearing, to examine and inspect NARABs records, and require NARAB to furnish it with any reports. NARAB shall report to NAIC annually on its activities. The NAIC shall have the responsibility of overseeing NARAB.

Section 331. Liability of the association and the directors, officers, and employees of the association

Section 331 clarifies that NARAB is not an insurer or insurance producer. NARAB and its directors, officers, and employees shall not be liable for any action taken or omitted in good faith in connection with matters subject to this title.

Section 332. Elimination of NAIC oversight

Section 332 provides that, if at the end of two years after NARAB is required to be established, (1) a majority of the States representing at least 50 percent of the total commercial-lines insurance premiums in the United States have not established uniform or reciprocal licensing regulations, or (2) NAIC has not approved NARABs bylaws or is unable to operate or supervise NARAB (or if NARAB is not conducting its activities under this Act), then NARAB shall be created and supervised by the President, and shall exist without NAIC oversight. The President shall appoint NARABs board, with the advice and consent of the Senate, from lists of candidates submitted by NAIC. If the President determines that NARABs board is not acting in the public interest, the President may replace the entire board with new members (subject to

the advice and consent of the Senate). The President may also suspend the effectiveness of any rule or action by NARAB which the President determines is contrary to the public interest. NARAB shall report annually to the President and Congress on its activities.

Section 333. Relationship to State law

Section 333 preempts State laws regulating insurance licensing that discriminate against NARAB members based on non-residency. The section also preempts State laws and regulations which impose additional licensing requirements on non-resident NARAB members beyond those set forth in section 325, except that State unfair trade practices and consumer protection laws are protected from preemption, including counter-signature requirements.

Section 334. Coordination with other regulators

Section 334 directs NARAB to coordinate its multistate licensing with the various States, while preserving the ability of each State to impose appropriate conditions on licensing issuance and renewal. NARAB shall also coordinate with the States a central clearinghouse for license issuance and renewal, and for the collection of regulatory information on insurance producer activities. NARAB shall further coordinate with the NASD to facilitate joint membership.

Section 335. Judicial review

Section 335 provides that any dispute involving NARAB shall be brought in the appropriate United States District Court under Federal law, after all administrative remedies through NARAB and NAIC have been exhausted.

Section 336. Definitions

Section 336 provides definitions for the purposes of the subtitle only.

TITLE IV—MERGER OF BANK AND THRIFT CHARTERS, REGULATORS, AND INSURANCE FUNDS

Section 401. Short title; definitions

Section 401 designates Title IV as the "Thrift Charter Transition Act of 1997". It also specifies that, unless otherwise defined, the terms "bank holding company", "depository institution", "Federal savings association", "insured depository institution", "savings association", "State bank", and "State savings association"—as used in the uncodified provisions of the Act—have the same meanings as in section 3 of the Federal Deposit Insurance Act (FDIA), as in effect on the day before enactment of this Act.

Subtitle A—Facilitating Conversions of Savings Associations to Banks

Section 411. Conversion to State or national banks

Under Section 411, all Federal savings associations in existence two years after the date of enactment will, by operation of law, be-

come national banks at that time. A Federal savings association can accelerate its conversion to a national bank by filing a notice with the Comptroller of the Currency. The notice must specify a date for the association's conversion, and that date must be at least 30 days after the date the notice is filed. The Federal savings association will become a national bank on the date specified.

A State savings association can become a national bank during the two-year period beginning on the date of enactment by filing a notice with the Comptroller. Like the notice filed by a Federal savings association, the State association's notice must contain a specified date for its conversion. The date must be at least 30 days after the date the notice is filed, and the association will become a national bank on the date specified.

Any mutual savings association becoming a national bank under this section will become a mutual national bank. The conversion authority provided by this section does not affect any other authority of a savings association to become a national bank, State bank, or State savings association.

Finally, a Federal savings association that has its charter converted to a national bank charter or a State depository institution charter, is permitted to retain the word "Federal" in its name. The provision would apply to institutions whether the charter is converted voluntarily or by operation of law. In order to maintain its Federal nexus, the deposits of such institution must remain insured by the FDIC. This section becomes effective 60 days after the date of enactment of the Act.

Section 412. Mutual national banks and Federal mutual bank holding companies authorized

This section authorizes the Comptroller of the Currency to charter national banking associations as mutual national banks, either de novo or through conversions. Unless otherwise provided by this section or by the Comptroller, a mutual national bank will be subject to the same laws and requirements and will have the same powers and privileges as a national banking association operating in stock form. The Comptroller must supervise and examine mutual national banks in the same manner and to the same extent as stock national banks. Subject to conditions imposed by the Comptroller, a mutual national bank may become a stock national bank, and a stock national bank may become a mutual national bank.

This section also authorizes the Comptroller to charter Federal mutual bank holding companies. Subject to approval under Bank Holding Company Act of 1956 (BHCA), a mutual national bank may reorganize into a Federal mutual bank holding company. The reorganization plan requires the Comptroller's approval. The plan also requires approval by a majority of the mutual national bank's board of directors. If account holders and obligors have voting rights in the mutual national bank, the plan also requires approval by a majority of such individuals.

In addition, the section governs when capital can be retained at the holding company level, the ownership rights in the holding company, and the liquidation of Federal mutual bank holding companies. The HCA applies to Federal mutual bank holding compa-

nies. A mutual savings and loan holding company may become a Federal mutual bank holding company by filing a notice with the Comptroller specifying the date for its conversion. A mutual savings and loan holding company in existence two years after the date of enactment automatically becomes a Federal mutual bank holding company.

Section 413. Grandfathered activities of savings associations

Section 413 provides that a national bank that results from the conversion of a savings association under section 411 may not engage in any activity, including the holding of any asset, unless the activity is authorized by section 413 or is otherwise permissible for national banks. Under section 413, a savings association that converts to a national bank may continue to engage in any activity, including holding any asset, in which it was lawfully engaged prior to its conversion to a national bank.

These grandfather rights are subject to several safeguards. During the two-year period following the date of enactment, a national bank resulting from a conversion may retain an investment not permissible for national banks only if the bank complies with section 5(t)(5) of the Home Owners' Loan Act (HOLA), which requires that the investment be deducted from capital, to the same extent as if the bank was still a savings association. For investments made after the date of enactment but prior to conversion, the national bank may retain an equity investment in a subsidiary that is engaged in an activity impermissible for a national bank to engage in directly only if the converted institution and the subsidiary comply with section 5136A of the Revised Statutes (as added by section 141).

Section 414. Branches of former savings associations

Section 414 authorizes a savings association that becomes a national bank to retain branches and agencies that it operated on the day before the date of enactment. This section also protects branching rights obtained in assisted acquisitions. Savings associations that become State banks will be subject to applicable State and Federal branching laws. Further branching by savings associations that become national banks will be governed by the same laws that apply to all national banks.

Section 415. Programs for promoting housing finance

Section 415 requires each appropriate Federal banking agency to establish a program designed to facilitate the conversion of savings associations to banks, and the treatment of State savings associations as banks, and to assure that insured depository institutions may specialize in residential mortgage lending. The agencies also must develop guidelines and procedures for assuring that insured depository institutions are not subject to supervisory criticism or sanction for prudently concentrating in residential mortgage lending.

Section 416. Savings and loan holding companies

Section 416 provides grandfather rights for savings and loan holding companies that become bank holding companies due to the

automatic conversion provisions of section 411. A company qualifies for grandfather rights if, as of September 16, 1997, the company was a savings and loan holding company (or had filed an application to become a savings and loan holding company) and becomes a bank holding company because of changes made by the Act.

Also grandfathered are savings and loan holding companies that were exempt from the nonbanking limitations of the HCA pursuant to an order issued by the Board under Section 4(d) of that Act. If a company qualifies for grandfather rights, it may maintain or enter into any nondepository institution affiliation that was permissible under section 10 of the HOLA, and may engage in any activity (including holding any asset) that was permissible under section 10 of the HOLA. To retain its grandfather rights, a savings and loan holding company may not acquire control of another bank. Certain exceptions to this prohibition are provided, including an exception that permits the acquisition of a bank from the FDIC.

A savings and loan holding company's grandfathered rights cannot be transferred. A savings and loan holding company that becomes a bank holding company due to the amendments adopted by the Act need not file an application under section 3(a)(1) of the HCA when its savings association converts to a bank by operation of law. Moreover, a grandfathered company that was regulated as a savings and loan holding company under section 10 of HOLA before June 19, 1997, would be subject to holding company capital requirements to the same extent such capital requirements were imposed under section 10 of the HOLA by the Office of Thrift Supervision (OTS), and must otherwise be regulated in the same manner as a savings and loan holding company under section 10 of HOLA for a period of three years. An insured depository institution controlled by a grandfathered savings and loan holding company may not engage in a covered transaction (as defined in section 23A of the Federal Reserve Act) with any affiliate that is engaged in activities that are not financial in nature or that is held pursuant to merchant banking or insurance company investment authority. No depository institution controlled by a grandfathered savings and loan holding company also may provide overdrafts to any affiliate or incur overdrafts in the institution's account at a Federal Reserve Bank or Federal Home Loan Bank for the benefit of the affiliate.

Section 417. Treatment of references in adjustable rate mortgages

Section 418. Cost of funds indexes

These sections provide for substitute or alternative cost of funds indexes used in calculating adjustable interest rate mortgages. These new formulas are needed because current ones include data based on charter type, insurance fund membership, or characteristics of members of Federal Home Loan Banks which are changed under the Act.

Subtitle B—Ending Separate Federal Regulation of Savings Associations and Savings and Loan Holding Companies

Section 421. State savings associations treated as State banks under Federal banking law

Section 421 amends the definition of "State bank" under the FDIA to include State chartered savings associations. It also amends the exceptions to the definition of "bank holding company" in the HCA by repealing the exemption for companies that own or control a State chartered bank or trust company that is wholly owned by thrift institutions or savings banks. These amendments become effective two years after the date of enactment.

Section 422. Home Owners' Loan Act repealed

Section 422 repeals the Home Owners' Loan Act effective two years after the date of enactment.

Section 423. Conforming amendment reflecting elimination of the Federal Thrift Charter and the separate system of thrift regulation

Section 423 makes the merger of the Bank Insurance Fund and the Savings Association Insurance Fund effective two years after the date of enactment or January 1, 2000, whichever is earlier.

Section 424. Conforming amendments to the Federal Home Loan Bank Act

Section 424 makes a series of conforming amendments to the Federal Home Loan Bank Act (FHLBA). The amendments to the FHLBA become effective two years after the date of enactment.

Section 425. Amendments to Title 11, United States Code

Section 425 provides that a Federal mutual holding company will be treated under Federal bankruptcy law in a similar manner to a bank holding company that owns a national bank. It also provides Federal mutual bank holding companies with the same conservatorship, receivership, indemnification and trustee appointment rights given to other institutions.

Subtitle C—Combining OTS and OCC

Section 431. Prohibition of merger or consolidation repealed

Effective on the date of enactment of the Act, section 431 repeals the prohibition against the Secretary of the Treasury merging or consolidating functions of the Office of Thrift Supervision and the Office of the Comptroller of the Currency. With this repeal, the Secretary may combine functions or otherwise reorganize those offices as appropriate to manage their responsibilities and resources, consistent with other provisions of law.

Section 432. Secretary of Treasury required to formulate plans for combining Office Of Thrift Supervision with Office of the Comptroller of the Currency

Section 432 requires the Secretary of Treasury, no later than nine months after the date of enactment of the Act, to develop a

plan for merging the OTS with the OCC within 2 years of the date of enactment. The OTS and OCC are required to implement the plan. This section is intended to ensure that examination resources are appropriately allocated to maintain the safety and soundness of regulated institutions and that personnel and administrative matters are resolved in a coordinated manner.

Section 433. Office of Thrift Supervision and position of Director of Office of Thrift Supervision abolished

Section 433, effective two years after the date of enactment of the Act, abolishes the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision.

Section 434. Reconfiguration of Board of Directors of FDIC as a result of removal of Director of the Office of Thrift Supervision

Section 434 makes conforming changes in the Board of Directors of the FDIC to reflect the abolition of the OTS. It provides that the management of the Corporation will be vested in a five-member Board comprised of the Comptroller of the Currency, and four Presidential appointees that are confirmed by the Senate. One of these four appointees must have State bank supervisory experience. These changes are effective two years after enactment of the Act.

Section 435. Continuation provisions

Section 435 continues all the orders, regulations and other regulatory actions of the OTS through the conversion period; ensures that the merger does not unintentionally effect the rights of parties in litigation; permits the continuation, if needed, of arrangements between the OTS and other agencies until those arrangements can be concluded in an orderly fashion; and transfers OTS property to the OCC or another appropriate successor agency.

Subtitle D—Technical and Conforming Amendments to the Depository Institution Statutes

Subtitle D contains technical and conforming amendments to statutes governing depository institutions and depository institution holding companies. These changes are necessary to reflect the changes made by the Act, including the abolition of the OTS and the conversion of savings and loan associations to banks. The amendments become effective two years after the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

BANKING ACT OF 1933

* * * * * * *

[SEC. 20. After one year from the date of the enactment of this Act, no member bank shall be affiliated in any manner described

in section 2(b) hereof with any corporation, association, business trust, or other similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks, bonds, debentures, notes, or other securities: *Provided*, That nothing in this paragraph shall apply to any such organization which shall have been placed in formal liquidation and which shall transact no business except such as may be incidental to the liquidation of its affairs.

[For every violation of this section the member bank involved shall be subject to a penalty not exceeding $1,000 per day for each day during which such violation continues. Such penalty may be assessed by the Federal Reserve Board, in its discretion, and, when so assessed, may be collected by the Federal reserve bank by suit or otherwise.

[If any such violation shall continue for six calendar months after the member bank shall have been warned by the Federal Reserve Board to discontinue the same, (a) in the case of a national bank, all the rights, privileges, and franchises granted to it under the National Bank Act may be forfeited in the manner prescribed in section 2 of the Federal Reserve Act, as amended (U.S.C., title 12, secs. 141, 222–225, 281–286, and 502) or, (b) in the case of a State member bank, all of its rights and privileges of membership in the Federal Reserve System may be forfeited in the manner prescribed in section 9 of the Federal Reserve Act, as amended (U.S.C., title 12, secs. 321–332).]

SEC. 21. (a) After the expiration of one year after the date of enactment of this Act it shall be unlawful—

(1) For any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling, or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities, to engage at the same time*, or to be a subsidiary of any person, firm, corporation, association, business trust, or similar organization engaged (unless such subsidiary was engaged in such securities activities as of September 15, 1997),* to any extent whatever in the business of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor: *Provided*, That the provisions of this paragraph shall not prohibit national banks or State banks or trust companies (whether or not members of the Federal Reserve System) or other financial institutions or private bankers from dealing in, underwriting, purchasing, and selling investment securities, or issuing securities, to the extent permitted to national banking associations by the provisions of section 5136 of the Revised Statutes, as amended (U.S.C. title 12, sec. 24; Supp. VII, title 12, sec. 24): *Provided further*, That nothing in this paragraph shall be construed as affecting in any way such right as any bank, banking association, savings bank, trust company, or other banking institution, may otherwise possess to sell, without recourse or agreement to repurchase, obligations evidencing loans on real estate; or

(2) For any person, firm, corporation, association, business trust, or other similar organization to engage, to any extent whatever

with others than his or its officers, agents or employees, in the business of receiving deposits subject to check or to repayment upon presentation of a pass book, certificate of deposit, or other evidence of debt, or upon request of the depositor, unless such person, firm, corporation, association, business trust, or other similar organization (A) shall be incorporated under, and authorized to engage in such business by, the laws of the United States or of any State, Territory, or District, and subjected, by the laws of the United States, or of the State, Territory, or District wherein located, to examination and regulation, or (B) shall be permitted by the United States, any State, territory, or district to engage in such business and shall be subjected by the laws of the United States, or such State, territory, or district to examination and regulations or, (C) shall submit to periodic examination by the banking authority of the State Territory, or District where such business is carried on and shall make and publish periodic reports of its condition, exhibiting in detail its resources and liabilities, such examination and reports to be made and published at the same times and in the same manner and under the same conditions as required by the law of such State, Territory, District in the case of incorporated banking institutions engaged in such business in the same locality.

* * * * * * *

[SEC. 32. No officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve the same time as an officer, director, or employee of any member bank except in limited classes of cases in which the Board of Governors of the Federal Reserve System may allow such service by general regulations when in the judgment of the said Board it would not unduly influence the investment policies of such member bank or the advice it gives its customers regarding investments.]

* * * * * * *

BANK HOLDING COMPANY ACT OF 1956

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DEFINITIONS

SEC. 2. (a)(1) * * *

* * * * * * *

(5) Notwithstanding any other provision of this subsection—

(A) * * *

* * * * * * *

[(E) No company is a bank holding company by virtue of its ownership or control of any State-chartered bank or trust company which—

[(i) is wholly owned by thrift institutions or savings banks; and

[(ii) is restricted to accepting—

[(I) deposits from thrift institutions or savings banks;

[(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

[(III) deposits of public moneys.]

* * * * * * *

(c) BANK DEFINED.—For purposes of this Act—

(1) IN GENERAL.—Except as provided in paragraph (2), the term "bank" means any of the following:

(A) * * *

* * * * * * *

(C) A wholesale financial institution.

* * * * * * *

[(i) THRIFT INSTITUTION.—For purposes of this Act, the term "thrift institution" means—

[(1) any domestic building and loan or savings and loan association;

[(2) any cooperative bank without capital stock organized and operated for mutual purposes and without profit;

[(3) any Federal savings bank; and

[(4) any State-chartered savings bank the holding company of which is registered pursuant to section 408 of the National Housing Act.

[(j) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERM.—The term "savings association" or "insured institution" means—

[(1) any Federal savings association or Federal savings bank;

[(2) any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Savings Association Insurance Fund; and

[(3) any savings bank or cooperative bank which is deemed by the Director of the Office of Thrift Supervision to be a savings association under section 10(l) of the Home Owners' Loan Act.]

(i) [Repealed.]

(j) [Repealed.]

* * * * * * *

(n) INCORPORATED DEFINITIONS.—For purposes of this Act, the terms "insured depository institution", "appropriate Federal banking agency", "default", "in danger of default", *"insured bank",* and "State bank supervisor" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(o) OTHER DEFINITIONS.—For purposes of this Act, the following definitions shall apply:

(1) * * *

* * * * * * *

(8) ANTITRUST AGENCIES.—The term "antitrust agencies" means the Attorney General and the Federal Trade Commission.

(9) APPROPRIATE ANTITRUST AGENCY.—With respect to a particular transaction, the term "appropriate antitrust agency" means the antitrust agency engaged in reviewing the competitive effects of such transaction.

(p) WHOLESALE FINANCIAL INSTITUTION.—The term "wholesale financial institution" means a wholesale financial institution subject to section 9B of the Federal Reserve Act.

(q) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(r) DEPOSITORY INSTITUTION.—The term "depository institution"—

(1) has the meaning given to such term in section 3 of the Federal Deposit Insurance Act; and

(2) includes a wholesale financial institution.

ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) * * *
(b)(1) * * *

* * * * * * *

(3) REQUIREMENT TO FILE INFORMATION WITH ANTITRUST AGENCIES.—Any applicant seeking prior approval of the Board to engage in an acquisition transaction under this section must file simultaneously with the Attorney General and, if the transaction also involves an acquisition under section 4 or 6, the Federal Trade Commission copies of any documents regarding the proposed transaction required by the Board.

* * * * * * *

(c) FACTORS FOR CONSIDERATION BY BOARD.—

[(1) COMPETITIVE FACTORS.—The Board shall not approve—

[(A) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

[(B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint or trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.**]**

[(2)**]** *(1)* BANKING AND COMMUNITY FACTORS.—In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

[(3)**]** *(2)* SUPERVISORY FACTORS.—The Board shall disapprove any application under this section by any company if—

(A) * * *

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[(4)] *(3)* TREATMENT OF CERTAIN BANK STOCK LOANS.—Notwithstanding any other provision of law, the Board shall not follow any practice or policy in the consideration of any application for the formation of a one-bank holding company if following such practice or policy would result in the rejection of such application solely because the transaction to form such one-bank holding company involves a bank stock loan which is for a period of not more than twenty-five years. The previous sentence shall not be construed to prohibit the Board from rejecting any application solely because the other financial arrangements are considered unsatisfactory. The Board shall consider transactions involving bank stock loans for the formation of a one-bank holding company having a maturity of twelve years or more on a case by case basis and no such transaction shall be approved if the Board believes the safety or soundness of the bank may be jeopardized.

[(5)] *(4)* MANAGERIAL RESOURCES.—Consideration of the managerial resources of a company or bank under paragraph (2) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank.

* * * * * * *

(e) Every bank that is a holding company and every bank that is a subsidiary of such company shall become and remain an insured depository institution as such term is defined in section 3 of the Federal Deposit Insurance Act. *This subsection shall not apply to a wholesale financial institution.*

* * * * * * *

(g) MUTUAL BANK HOLDING COMPANY.—

(1) * * *

[(2) REGULATION.—A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank.]

(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.

(h) SAVINGS AND LOAN HOLDING COMPANY POWERS GRANDFATHERED.—

(1) IN GENERAL.—A company that qualifies under paragraph (2) may—

(A) maintain or enter into any nonbank affiliation that the company was permitted pursuant to section 10 of the Home Owners' Loan Act to maintain or enter into prior to becoming a bank holding company pursuant to paragraph (2)(C); and

(B) engage in any activity, including holding any asset, in which the company or any affiliate described in subparagraph (A) was permitted pursuant to section 10 of the Home Owners' Loan Act to engage before becoming a bank holding company in a manner described in paragraph (2)(C).

(2) QUALIFIED GRANDFATHERED COMPANIES.—

(A) GRANDFATHERED COMPANIES DEFINED.—A company qualifies under this paragraph for purposes of paragraph (1) if—

(i) as of September 16, 1997, the company (or any affiliated company)—

(I) was a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act, as in effect on that date); or

(II) had filed an application to become a savings and loan holding company; and

(ii) the company—

(I) becomes a bank holding company by operation of law; or

(II) was exempt from section 4 (as in effect on the date of enactment of the Thrift Charter Transition Act of 1997) under an order issued by the Board under section 4(d) (as in effect on the date of enactment of the Thrift Charter Transition Act of 1997).

(B) HOLDING COMPANIES WITH IDENTICAL SHAREHOLDERS.—A company also qualifies under this paragraph for purposes of paragraph (1) if the company—

(i) is formed by a company qualified under subparagraph (A); and

(ii) the shareholders of such company are identical to the shareholders of the company referred to in (i).

(C) OPERATION OF LAW DEFINED.—For purposes of this subsection, a savings and loan holding company becomes a bank holding company by operation of law if a savings association controlled by the company is converted to a bank or is treated as a bank under an amendment made by the Thrift Charter Transition Act of 1997.

(3) REQUIREMENTS TO RETAIN GRANDFATHERED POWERS.—

(A) IN GENERAL.—Paragraph (1) shall cease to apply to a company if the company does not comply with this paragraph.

(B) ACQUISITION OF BANKS.—

(i) IN GENERAL.—The company may not acquire (by any form of business combination) control of a bank after the date of enactment of the Thrift Charter Transition Act of 1997.

(ii) EXCEPTIONS TO PROHIBITION.—Clause (i) shall not apply to the acquisition of—

(I) a bank, during the period ending on the date 2 years after the date of enactment of the Thrift Charter Transition Act of 1997, if the acquisition results from the conversion of a savings association or the treatment of a savings association as a bank under amendments made by the Thrift Charter Transition Act of 1997;

(II) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(III) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company or any subsidiary of the company and the beneficiaries of those employees;

(IV) an entity described in section 2(c)(2);

(V) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(VI) shares held in an account solely for trading purposes;

(VII) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(VIII) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

(X) a bank from the Federal Deposit Insurance Corporation, in any capacity; and

(XI) a bank in an acquisition in which the bank has been found to be in danger of default by the appropriate Federal or State authority.

(C) The company may not control a savings association or a national bank resulting from the conversion of a savings association to a national bank pursuant to section 411 if such savings association or national bank fails to comply with the requirements of section 5(c)(2) and section 10(m) of the Home Owners' Loan Act as in effect on the day before the date of the enactment of the Thrift Charter Transition Act of 1997.

(4) GRANDFATHERED POWERS NONTRANSFERABLE.—

(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any company if after the date of the enactment of the Thrift Charter Transition Act of 1997—

(i) any company (other than a company qualified under paragraph (2)) not under common control with such company as of that date acquires, directly, or indirectly, control of the company; or

(ii) the company is the subject of any merger, consolidation, or other type of business combination as a result of which a company (other than a company qualified under paragraph (2)) not under common control with such company acquires, directly or indirectly, control of such company.

(B) ANTI-EVASION.—The appropriate Federal banking agency may issue interpretations, regulations, or orders that it deems necessary to administer and carry out the purpose, and prevent evasions, of this paragraph, including determining that (notwithstanding the form of a transaction) the transaction would in substance effect a change in control.

(5) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—An insured depository institution controlled by a company that qualifies under paragraph (2) may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with—

(A) any affiliate unless the affiliate is engaged only in activities authorized for a financial holding company pursuant to section 6 (other than subsection (f) or (g) of such section); or

(B) any company controlled by an affiliate pursuant to subparagraphs (H) or (I) of subsection (c)(3) of such section.

(6) SAVINGS AND LOAN HOLDING COMPANIES THAT BECOME BANK HOLDING COMPANIES.—

(A) EXCLUSION FROM APPLICATION REQUIREMENT.—A company that qualifies under subparagraph (B) shall not be required to obtain the approval of the Board under subsection (a) to become a bank holding company if such company becomes a bank holding company after the date of enactment of the Thrift Charter Transition Act of 1997 as a result of the conversion of a savings association subsidiary to a bank or by virtue of the treatment of a savings association subsidiary as a bank under an amendment made by this Act.

(B) COMPANIES EXCLUDED FROM APPLICATION REQUIREMENT.—A company qualifies for purposes of subparagraph (A) if the company, as of the date of the enactment of the Thrift Charter Transition Act of 1997, was a savings and loan holding company (as defined in section 10(a) of the Home Owners' Loan Act as in effect on that date) or has filed an application to become a savings and loan holding company.

(C) SUPERVISION AND REGULATION OF COMPANIES THAT WERE PREVIOUSLY SAVINGS AND LOAN HOLDING COMPANIES.—

(i) IN GENERAL.—Any company that qualifies under paragraph (2) and complies with paragraph (3) and was registered and regulated under section 10 of the Home Owners' Loan Act on the day before becoming a bank holding company described in paragraphs (2) and (3) shall continue to be regulated, for a period of 3 years after becoming such holding company, under the terms of section 10 of the Home Owners' Loan Act in the same manner and to the same extent and subject to the same requirements as by the Office of Thrift Supervision before the date of the enactment of the Thrift Charter Transition Act of 1997.

(ii) HOLDING COMPANY CAPITAL EXCEPTION.—With regard to holding company capital, any company that qualifies under paragraph (2) and complies with paragraph (3) and was registered and regulated under section 10 of the Home Owners' Loan Act before June 19, 1997, or had an application pending to do so on such date, shall continue to be regulated under the terms of section 10 of the Home Owners' Loan Act in the same

manner and to the same extent and subject to the same requirements as by the Office of Thrift Supervision before the date of the enactment of the Thrift Charter Transition Act of 1997.

(iii) SUBMISSIONS TO REGULATORS.—A company shall provide for a period of 3 years after becoming a bank holding company described in paragraphs (2) and (3) the appropriate Federal banking agency with—

(I) notice of acquisition of any company not controlled or affiliated on the date of enactment of the Thrift Charter Transition Act of 1997 that is engaged in nonbanking activities within 15 days after completion of any such transaction; and

(II) copies of such quarterly and annual reports as it is otherwise required to file with any other governmental agency.

(iv) REPORTING REQUIREMENTS.—The appropriate Federal banking agency may adopt, for a period of 3 years after a company becomes a bank holding company described in paragraphs (2) and (3), reporting requirements substantially similar to and no more burdensome than required by the Office of Thrift Supervision as of January 1, 1997.

(v) REGULATORY AUTHORITY.—The appropriate Federal banking agency shall, for a period of 3 years after a company becomes a bank holding company described in paragraphs (2) and (3)—

(I) have the same authority to examine a company or any subsidiary or affiliate thereof only to the same extent as the Office of Thrift Supervision had as of January 1, 1997; and

(II) conduct only the same type of examination and with the same frequency as the Office of Thrift Supervision prior to January 1, 1997, unless required to prevent an unsafe or unsound activity or course of conduct of the savings institution converted to a bank pursuant to the Thrift Charter Transition Act of 1997.

(7) OVERDRAFTS PROHIBITED.—A depository institution controlled by a company described in paragraph (2) may not permit any overdraft (including any intraday overdraft) on behalf of any affiliate (as defined in section 2 of the Bank Holding Company Act of 1956), or incur any such overdraft in such institution's account at a Federal reserve bank or Federal home loan bank on behalf of any affiliate.

INTERESTS IN NONBANKING ORGANIZATIONS

SEC. 4. (a) * * *

* * * * * * *

(c) The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954,

or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) * * *

* * * * * * *

(8) shares of any company the activities of which had been determined by the Board by regulation under this paragraph as of the day before the date of the enactment of the Financial Services Act of 1997, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation, unless modified by the Board);

* * * * * * *

(f) CERTAIN COMPANIES NOT TREATED AS BANK HOLDING COMPANIES.—

(1) * * *

* * * * * * *

(2) LOSS OF EXEMPTION.—Paragraph (1) shall cease to apply to any company described in such paragraph if—

(A) such company directly or indirectly—

(i) * * *

(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or a savings association other than—

(I) * * *

* * * * * * *

(IX) shares of a savings association held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (11); **[**and**]**

(X) shares issued in a qualified stock insuance under section 10(q) of the Home Owners' Loan Act; *and*

(XI) assets that are derived from, or are incidental to, activities in which institutions described in section 2(c)(2)(F) are permitted to engage,

* * * * * * *

[(B) any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B).**]**

(B) any bank subsidiary of such company engages in any activity in which the bank was not lawfully engaged as of March 5, 1987, unless the bank is well managed and well capitalized;

(C) any bank subsidiary of such company both—

(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

(ii) engages in the business of making commercial loans (and, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

(D) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in such bank's account at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).

[(3) LIMITATION ON BANKS CONTROLLED BY PARAGRAPH (1) COMPANIES.—

[(A) FINDINGS.—The Congress finds that banks controlled by companies referred to in paragraph (1) may, because of relationships with affiliates, be involved in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness, and may also be able to compete unfairly against banks controlled by bank holding companies by combining banking services with financial services not permissible for bank holding companies. The purpose of this paragraph is to minimize any such potential adverse effects or inequities by temporarily restricting the activities of banks controlled by companies referred to in paragraph (1) until such time as the Congress has enacted proposals to allow, with appropriate safeguards, all banks or bank holding companies to compete on a more equal basis with banks controlled by companies referred to in paragraph (1) or, alternatively, proposals to permanently restrict the activities of banks controlled by companies referred to in paragraph (1).

[(B) LIMITATIONS.—Until such time as the Congress has taken action pursuant to subparagraph (A), a bank controlled by a company described in paragraph (1) shall not—

[(i) engage in any activity in which such bank was not lawfully engaged as of March 5, 1987;

[(ii) offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8), or permit its products or services to be offered or marketed in connection with products and services of an affiliate, unless—

[(I) the Board, by regulation, has determined such products and services are permissible for bank holding companies to provide under subsection (c)(8);

[(II) such products and services are described in section 20 of the Banking Act of 1933 and the Board, by regulation, has permitted bank holding companies to offer or market such products or services, but has prohibited bank holding compa-

nies and their affiliates from principally engaging in the offering or marketing of such products or services; or

[(III) such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date; or

[(iii) after the date of the enactment of the Competitive Equality Amendments of 1987, permit any overdraft (including an intraday overdraft), or incur any such overdraft in such bank"s account at a Federal Reserve bank, on behalf of an affiliate, other than an overdraft described in subparagraph (C).

[(C) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of subparagraph (B)(iii), an overdraft is described in this subparagraph if—

[(i) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

[(ii) such overdraft—

[(I) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

[(II) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

[(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption.]

(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of paragraph (2)(D), an overdraft is described in this paragraph if—

(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

(B) such overdraft—

(i) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—

(A) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; and

(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

* * * * * * *

ADMINISTRATION

SEC. 5. (a) Within one hundred and eighty days after the date of enactment of this Act, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry about the purposes of this Act. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information. *A declaration filed in accordance with section 6(b)(1)(D) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.*

* * * * * * *

[(c) The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this Act and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.**]**

(c) REPORTS AND EXAMINATIONS.—

(1) REPORTS.—

(A) IN GENERAL.—The Board from time to time may require any bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the holding company; and

(ii) compliance by the company or subsidiary with applicable provisions of this Act.

(B) USE OF EXISTING REPORTS.—

(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

(ii) AVAILABILITY.—A bank holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

(iii) REQUIRED USE OF PUBLICLY REPORTED INFORMATION.—The Board shall, to the fullest extent possible, accept in fulfillment of any reporting or recordkeeping requirements under this Act information that is otherwise required to be reported publicly and externally audited financial statements.

(iv) REPORTS FILED WITH OTHER AGENCIES.—In the event the Board requires a report from a functionally regulated nondepository institution subsidiary of a bank holding company of a kind that is not required by another Federal or State regulator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or its subsidiary depository institution or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.

(C) DEFINITION.—For purposes of this subsection, the term "functionally regulated nondepository institution" means—

(i) a broker or dealer registered under the Securities Exchange Act of 1934;

(ii) an investment adviser registered under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and

(iv) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.

(2) EXAMINATIONS.—

(A) EXAMINATION AUTHORITY.—

(i) IN GENERAL.—The Board may make examinations of each bank holding company and each subsidiary of a bank holding company.

(ii) FUNCTIONALLY REGULATED NONDEPOSITORY INSTITUTION SUBSIDIARIES.—Notwithstanding clause (i), the Board may make examinations of a functionally regulated nondepository institution subsidiary of a bank holding company only if—

(I) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution, or

(II) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated depository institution and the Board cannot make such determination through examination of the affiliated depository institution or bank holding company.

(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND SUBSIDIARIES.—Subject to subparagraph (A)(ii), the Board may make examinations under subparagraph (A)(i) of each bank holding company and each subsidiary of such holding company in order to—

(i) inform the Board of the nature of the operations and financial condition of the holding company and such subsidiaries;

(ii) inform the Board of—

(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and

(II) the systems for monitoring and controlling such risks; and

(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and its affiliates.

(C) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—

(i) the bank holding company; and

(ii) any subsidiary of the holding company that, because of—

(I) the size, condition, or activities of the subsidiary;

(II) the nature or size of transactions between such subsidiary and any depository institution which is also a subsidiary of such holding company; or

(III) the centralization of functions within the holding company system,

could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.

(D) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use, for the purposes of this paragraph, the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examination made of—

(i) any registered broker or dealer or registered investment adviser by or on behalf of the Securities and Exchange Commission;

(ii) any licensed insurance company by or on behalf of any state regulatory authority responsible for the supervision of insurance companies; and

(iii) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

(3) CAPITAL.—

(A) IN GENERAL.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any subsidiary of a financial holding company that is not a depository institution and—

(i) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority; or

(ii) is registered as an investment adviser under the Investment Advisers Act of 1940.

(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

(4) TRANSFER OF BOARD AUTHORITY TO APPROPRIATE FEDERAL BANKING AGENCY.—

(A) IN GENERAL.—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company as the appropriate Federal banking agency for the bank holding company.

(B) AUTHORITY TRANSFERRED.—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act to—

(i) examine and require reports from the bank holding company and any affiliate of such company (other than a depository institution) under section 5;

(ii) approve or disapprove applications or transactions under section 3;

(iii) take actions and impose penalties under subsections (e) and (f) of section 5 and section 8; and

(iv) take actions regarding the holding company, any affiliate of the holding company (other than a depository institution), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any other statute which the Board may designate.

(C) AGENCY ORDERS.—Section 9 (of this Act) and section 105 of the Bank Holding Company Act Amendments of 1970 shall apply to orders issued by an agency designated under subparagraph (A) in the same manner such sections apply to orders issued by the Board.

(5) FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE ACTIVITIES.—The Board shall defer to—

(A) the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies; and

(B) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

* * * * * * *

(e)(1) Notwithstanding any other provision of this Act, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this Act or with the [Financial Institutions Supervisory Act of 1966, order] *Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—*

(A) order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the [shareholders of the bank holding company. Such distribution] *shareholders of the bank holding company; or*

(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

The distribution referred to in subparagraph (A) shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

* * * * * * *

(g) AUTHORITY OF STATE INSURANCE REGULATOR AND THE SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable if—

(A) such funds or assets are to be provided by—

(i) a bank holding company that is an insurance company or is a broker or dealer registered under the Securities Exchange Act of 1934; or

(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under such Act; and

(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker or dealer, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker or dealer, as the case may be.

(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, which is an insurance company or a broker or dealer described in paragraph (1)(A) to provide funds or assets to an insured depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.

(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in such paragraph, the Board may order the bank holding company to divest the insured depository institution within 180 days of receiving notice or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.

(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.

(h) PRUDENTIAL SAFEGUARDS.—

(1) IN GENERAL.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution) which the Board finds is consistent with the public interest, the purposes of this Act, the Financial Services Act of 1997, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies and the standards in paragraph (2).

(2) STANDARDS.—The Board may exercise authority under paragraph (1) if the Board finds that such action will have any of the following effects:

(A) Avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund.

(B) Enhance the financial stability of bank holding companies.

(C) Avoid conflicts of interest or other abuses.

(D) Enhance the privacy of customers of depository institutions.

(E) Promote the application of national treatment and equality of competitive opportunity between nonbank affiliates owned or controlled by domestic bank holding companies and nonbank affiliates owned or controlled by foreign banks operating in the United States.

(3) REVIEW.—The Board shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

(B) modify or eliminate any restriction or requirement the Board finds is no longer required for such purposes.

SEC. 6. FINANCIAL HOLDING COMPANIES.

(a) FINANCIAL HOLDING COMPANY DEFINED.—For purposes of this section, the term "financial holding company" means a bank holding company which meets the requirements of subsection (b).

(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES.—

(1) IN GENERAL.—No bank holding company may engage in any activity or directly or indirectly acquire or retain shares of any company under this section unless the bank holding company meets the following requirements:

(A) All of the subsidiary depository institutions of the bank holding company are well capitalized.

(B) All of the subsidiary depository institutions of the bank holding company are well managed.

(C) All of the subsidiary depository institutions of the bank holding company have achieved a rating of "satisfactory record of meeting community credit needs", or better, at the most recent examination of each such institution under the Community Reinvestment Act of 1977.

(D) The company has filed with the Board a declaration that the company elects to be a financial holding company and certifying that the company meets the requirements of subparagraphs (A) through (C).

(2) FOREIGN BANKS AND COMPANIES.—For purposes of paragraph (1), the Board shall establish and apply comparable capital standards to a foreign bank that operates a branch or agency or owns or controls a bank or commercial lending company in the United States, and any company that owns or controls such foreign bank, giving due regard to the principle of national treatment and equality of competitive opportunity.

(3) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—If the requirements of subparagraph (B) are met, any depository institution acquired by a bank holding company during the 24-month period preceding the submission of a declaration under paragraph (1)(D) and any depository institution acquired after the submission of such declaration may be excluded for purposes of paragraph (1)(C) until the later of—

(i) the end of the 24-month period beginning on the date the acquisition of the depository institution by such company is consummated; or

(ii) the date of completion of the 1st examination of such depository institution under the Community Reinvestment Act of 1977 which is conducted after the date of the acquisition of the depository institution.

(B) REQUIREMENTS.—The requirements of this subparagraph are met with respect to any bank holding company referred to in subparagraph (A) if—

(i) the bank holding company has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of "satisfactory record of meeting community credit needs", or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and

(ii) the plan has been approved by such agency.

(c) ENGAGING IN ACTIVITIES FINANCIAL IN NATURE.—

(1) IN GENERAL.—Notwithstanding section 4(a), a financial holding company and a Board supervised investment bank holding company may engage in any activity and acquire and retain the shares of any company the activities of which the Board has determined (by regulation or order) to be financial in nature or incidental to such financial activities.

(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Board shall take into account—

(A) the purposes of this Act and the Financial Services Act of 1997;

(B) changes or reasonably expected changes in the marketplace in which bank holding companies compete;

(C) changes or reasonably expected changes in the technology for delivering financial services; and

(D) whether such activity is necessary or appropriate to allow a bank holding company and the affiliates of a bank holding company to—

(i) compete effectively with any company seeking to provide financial services in the United States;

(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

(iii) offer customers any available or emerging technological means for using financial services.

(3) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.

(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(E) Underwriting, dealing in, or making a market in securities.

(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1997, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

(G) Engaging, in the United States, in any activity that—

(i) a bank holding company may engage in outside the United States; and

(ii) the Board has determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Act of 1997) to be usual in connection with the transaction of banking or other financial operations abroad.

(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including

entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by a securities affiliate or an affiliate thereof as part of a bona fide underwriting or merchant banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

(iii) such shares, assets, or ownership interests, are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).

(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance);

(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does

not directly or indirectly participate in the day-to-day management or operation of the company or entity except insofar as necessary to achieve the objectives of clauses (ii) and (iii).

(4) ACTIONS REQUIRED.—The Board shall, by regulation or order, define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(B) Providing any device or other instrumentality for transferring money or other financial assets;

(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(5) POST CONSUMMATION NOTIFICATION.—

(A) IN GENERAL.—A financial holding company and a Board supervised investment bank holding company that acquires any company, or commences any activity, pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired no later than 30 calendar days after commencing the activity or consummating the acquisition.

(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in section 4(j) with regard to the acquisition of a savings association, a financial holding company and a Board supervised investment bank holding company may commence any activity, or acquire any company, pursuant to paragraph (3) or any regulation prescribed or order issued under paragraph (4), without prior approval of the Board.

(d) PROVISIONS APPLICABLE TO FINANCIAL HOLDING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

(1) IN GENERAL.—If the Board finds that a financial holding company is not in compliance with the requirements of subparagraph (A), (B), or (C) of subsection (b)(1), the Board shall give notice of such finding to the company.

(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Within 45 days of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company shall execute an agreement acceptable to the Board to comply with the requirements applicable to a financial holding company.

(3) BOARD MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

(4) FAILURE TO CORRECT.—If, after receiving a notice under paragraph (1), a financial holding company does not—

(A) execute and implement an agreement in accordance with paragraph (2);

(B) comply with any limitations imposed under paragraph (3);

(C) in the case of a notice of failure to comply with subsection (b)(1)(A), restore each depository institution subsidiary to well capitalized status before the end of the 180-day period beginning on the date such notice is received by the company (or such other period permitted by the Board); or

(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (b)(1), restore compliance with any such subparagraph by the date the next examination of the depository institution subsidiary is completed or by the end of such other period as the Board determines to be appropriate,

the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, to divest control of any depository institution subsidiary or, at the election of the financial holding company, instead to cease to engage in any activity conducted by such company or its subsidiaries pursuant to this section.

(5) CONSULTATION.—In taking any action under this subsection, the Board shall consult with all relevant Federal and State regulatory agencies.

(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A financial holding company shall assure that—

(1) the procedures of the holding company for identifying and managing financial and operational risks within the company, and the subsidiaries of such company, adequately protect the subsidiaries of such company which are insured depository institutions from such risks;

(2) the holding company has reasonable policies and procedures to preserve the separate corporate identity and limited liability of such company and the subsidiaries of such company, for the protection of the company's subsidiary insured depository institutions; and

(3) the holding company complies with this section.

(f) NONFINANCIAL ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding section 4(a), a financial holding company may engage in activities which are not (or have not been determined to be) financial in nature or incidental to activities which are financial in nature, or acquire and retain ownership and control of the shares of a company engaged in such activities, if—

(A) the aggregate annual gross revenues derived from all such activities and all such companies does not exceed the lesser of—

(i) 5 percent of the consolidated annual gross revenues of the financial holding company; or

(ii) $500,000,000;

(B) the consolidated total assets of any company the shares of which are acquired by the financial holding company pursuant to this paragraph are less than $750,000,000 at the time the shares are acquired by the holding company; and

(C) the holding company provides notice to the Board within 30 days of commencing the activity or acquiring the ownership or control.

(2) INCLUSION OF GRANDFATHERED ACTIVITIES.—For purposes of determining the limits contained in paragraph (1)(A), the gross revenues derived from all activities conducted, and companies the shares of which are held, under subsection (g) shall be considered to be derived or held under this subsection.

(3) FOREIGN BANKS.—In lieu of the limitation contained in paragraph (1)(A) in the case of a foreign bank or a company that owns or controls a foreign bank which engages in any activity or acquires or retains ownership or control of shares of any company pursuant to paragraph (1), the aggregate annual gross revenues derived from all such activities and all such companies in the United States shall not exceed the lesser of—

(A) 5 percent of the consolidated annual gross revenues of the foreign bank or company in the United States derived from any branch, agency, commercial lending company, or depository institution controlled by the foreign bank or company and any subsidiary engaged in the United States in activities permissible under section 4 or 6; or

(B) $500,000,000.

(4) INDEXING REVENUE TEST.—After December 31, 1998, the Board shall annually adjust the dollar amount contained in paragraphs (1)(A) and (3) by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

(5) NONAPPLICABILITY OF OTHER EXEMPTION.—Any foreign bank or company that owns or controls a foreign bank which engages in any activity or acquires or retains ownership or control of shares of any company pursuant to this subsection shall not be eligible for any exception described in section 2(h).

(g) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

(1) IN GENERAL.—Notwithstanding subsection (f)(1) and section 4(a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Financial Services Act of 1997 may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1997;

(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

(C) the company engaged in such activity continues to engage only in the same activities that such company conducted on September 30, 1997, and other activities permissible under this Act.

(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if, as of the day before the company becomes a financial

holding company, the annual gross revenues derived by the holding company and all subsidiaries of the holding company, on a consolidated basis, from engaging in activities that are financial in nature or are incidental to activities that are financial in nature under subsection (c) represent at least 85 percent of the consolidated annual gross revenues of the company.

(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under subsection (c).

(4) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—A depository institution controlled by a financial holding company shall not—

(A) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection, subsection (f), or subparagraph (H) or (I) of subsection (c)(3); or

(B) permit any of its products or services to be offered or marketed, directly or through any arrangement, by or through any company described in subparagraph (A).

(5) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—An insured depository institution controlled by a financial holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to this subsection or subparagraph (H) or (I) of subsection (c)(3).

(h) DEVELOPING ACTIVITIES.—A financial holding company and a Board supervised investment bank holding company may engage, or directly or indirectly or acquire shares of any company engaged, in any activity that the Board has not determined to be financial in nature or incidental to financial activities under subsection (c) if—

(1) the holding company reasonably concludes that the activity is financial in nature or incidental to financial activities;

(2) the gross revenues from all activities conducted under this subsection represent less than 5 percent of the consolidated gross revenues of the holding company;

(3) the aggregate total assets of all companies the shares of which are held under this subsection do not exceed 5 percent of the holding company's consolidated total assets;

(4) the total capital invested in activities conducted under this subsection represents less than 5 percent of the consolidated total capital of the holding company;

(5) the Board has not previously determined that the activity is not financial in nature or incidental to financial activities under subsection (c); and

(6) the holding company provides written notification to the Board describing the activity commenced or conducted by the

company acquired no later than 10 business days after commencing the activity or consummating the acquisition.

RESERVATION OF RIGHTS TO STATES

SEC. 7. (a) IN GENERAL.—[No provision] *Except as provided in subsection (c), no provision* of this Act shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks, bank holding companies, and subsidiaries thereof.

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(c) PREEMPTION OF CERTAIN STATE RESTRICTIONS.—

(1) AFFILIATIONS.—No State may by law, regulation, order, interpretation, or otherwise, prevent or restrict an insured depository institution or a wholesale financial institution from being affiliated with an entity (including an entity engaged in insurance activities) as authorized by this Act or section 17(i) of the Securities Exchange Act of 1934.

(2) CERTAIN ACTIVITIES CONDUCTED IN CONJUNCTION WITH AFFILIATES.—No State may by law, regulation, order, interpretation, or otherwise, prevent a national bank or a wholesale financial institution from engaging, or significantly interfere with the ability of such national bank or wholesale financial institution to engage, directly or indirectly, or in conjunction with an affiliate referred to in paragraph (1), in any activity as authorized under section 6 or 10 of this Act or section 17(i) of the Securities Exchange Act of 1934.

[AMENDMENTS TO INTERNAL REVENUE CODE OF 1954

[SEC. 10. (a) Subchapter O of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new part:

* * * * * * *

[(c) The amendments made by this section shall apply with respect to taxable years ending after the date of the enactment of this Act.]

SEC. 10. INVESTMENT BANK HOLDING COMPANIES.

(a) COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—Any company shall be supervised in accordance with this section if the company—

(A) either—

(i) is substantially engaged in the securities business, as provided in paragraph (2); or

(ii) was, as of the date of the enactment of the Financial Services Act of 1997, a bank holding company;

(B) controls 1 or more wholesale financial institutions;

(C) does not control—

(i) a bank other than a wholesale financial institution;

(ii) an insured bank other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2); or

(iii) a savings association; and

(D) is not a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978).

(2) SUBSTANTIALLY ENGAGED IN SECURITIES BUSINESS.—A company shall be treated as being substantially engaged in the securities business for purposes of this section if—

(A) the company controls 1 or more registered securities brokers or dealers; and

(B) either—

(i) the annual total consolidated net revenues derived by the company and its subsidiaries from effecting transactions in or buying and selling securities as a broker or dealer represent at least 35 percent of the annual total consolidated net revenues of the company; or

(ii) the registered brokers or dealers controlled by the company have in the aggregate total consolidated equity capital and qualifying subordinated debt (based on an average for the 4 preceding calendar quarters) of more than $750,000,000 and such total equity capital and qualifying subordinated debt does not fall below $500,000,000 (based on an average for the 4 preceding calendar quarters).

(3) SAVINGS ASSOCIATION TRANSITION PERIOD.—Notwithstanding paragraph (1)(C)(iii), the Board may permit a company that controls a savings association and that otherwise meets the requirements of paragraph (1) to become supervised under paragraph (1), if the company divests control of any such savings association within such period not to exceed 5 years after becoming supervised under paragraph (1) as permitted by the Board.

(b) COMPANIES SUPERVISED BY SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—Except as provided in paragraph (3), any company that is described in subsection (a)(1) shall be subject to supervision by the Commission under section 17(i) of the Securities Exchange Act of 1934 and not by the Board and shall, for purposes of this Act, be treated as an SEC supervised investment bank holding company, if the company—

(A) is substantially engaged in the securities business, as provided in subsection (a)(2); and

(B) controls 1 or more wholesale financial institutions that in the aggregate have—

(i) consolidated risk-weighted assets that on an annual basis are less than $15,000,000,000; and

(ii) annual gross revenues that represent less than 25 percent of the consolidated annual gross revenues of the company.

(2) DOLLAR AMOUNT.—

(A) RISK-WEIGHTED ASSETS.—For purposes of paragraph (1)(A), the consolidated risk-weighted assets of a wholesale financial institution shall—

(i) be based on the average consolidated risk-weighted assets of the institution for the four previous calendar quarters; and

(ii) include risk-weighted claims on affiliates only to the extent such claims, in the aggregate, exceed the aggregate risk—weighted claims of affiliates on the wholesale financial institution.

(B) TREATMENT OF SUBSIDIARIES.—For purposes of subparagraph (A)(ii), the term "affiliates" shall not include any subsidiary of the wholesale financial institution.

(C) INDEXED GROWTH.—The dollar amount contained in paragraph (1)(A) shall be adjusted annually after December 31, 1998, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

(3) ELECTION.—

(A) FILING.—An SEC supervised investment bank holding company may elect to be supervised by the Board and not the Commission by filing with the Board the notice of withdrawal described in section 17(i)(3)(B) of the Securities Exchange Act of 1934.

(B) EFFECTIVE DATE OF TRANSFER OF AUTHORITY.—If a company files an election under subparagraph (A), the Board shall, subject to any conditions, restrictions or limitations as the Board deems necessary or appropriate after consultation with the Commission, assume full supervisory authority and responsibility for the company under this Act immediately upon the effectiveness of the company's notice of withdrawal under section 17(i) of the Securities Exchange Act of 1934.

(C) RETENTION OF JURISDICTION.—The filing of a notice under subparagraph (A) or under section 17(i) of the Securities Exchange Act of 1934 shall not affect the jurisdiction and authority of the Commission to take any action authorized by this section or the Federal securities laws against any person with respect to any action (or failure to act) that occurs before the transfer of supervisory authority to the Board.

(4) REVOCATION OF ELECTION.—

(A) FILING.—

(i) IN GENERAL.—An investment bank holding company that—

(I) has filed an election under paragraph (3)(A):

(II) meets the requirements of paragraph (1); and

(III) is substantially engaged in the securities business, as provided in subsection (a)(2),

may revoke its election to be supervised by the Board and thereby become supervised by the Commission by filing with the Board and the Commission a notice of revocation in such form as the Board may prescribe.

(ii) CONDITIONS.—Any revocation filed under clause (i) shall be subject to any conditions, restrictions or limitations as the Board finds to be necessary or appropriate after consultation with the Commission.

(B) EFFECTIVE DATE OF TRANSFER OF AUTHORITY.—If the investment bank holding company files a notice under sub-

paragraph (A), the Board shall discontinue supervision of the investment bank holding company on the later of—

(i) the end of the 45-day period beginning on the date of receipt by the Board and the Commission of the notice of revocation; or

(ii) such shorter or longer period as the Board shall determine, after consultation with the Commission, is necessary or appropriate to prevent evasion of the purposes of this Act.

(C) RETENTION OF JURISDICTION.—The filing of a notice under subparagraph (A) shall not affect the jurisdiction and authority of the Board to take any action authorized by this section against any person with respect to any action (or failure to act) that occurs before the transfer of supervisory authority to the Commission.

(D) LIMITATION ON REVOCATIONS.—Without the consent of the Board and the Commission, an investment bank holding company may file a revocation of election under subparagraph (A) only once during any 5-year period.

(5) LIMITED TREATMENT AS BANK HOLDING COMPANIES.—Notwithstanding section 2(a), an SEC supervised investment bank holding company shall not be a bank holding company except for purposes of—

(A) section 2(g), section 3, section 5(f), section 7, section 8, and section 11 of this Act;

(B) section 3, section 7(j) and subsections (b) through (n), (s), (u) and (v) of section 8 of the Federal Deposit Insurance Act; and

(C) section 106 of the 1970 Amendments to the Bank Holding Company Act.

(c) COMPANIES SUPERVISED BY THE BOARD.—

(1) BOARD SUPERVISION.—Any company described in subsection (a)(1) that is not supervised by the Commission under section 17(i) of the Securities Exchange Act of 1934 shall be supervised by the Board and shall, for purposes of this Act, be a Board supervised investment bank holding company.

(2) IN GENERAL.—The provisions of this section shall govern the reporting, examination, and capital requirements of Board supervised investment bank holding companies.

(3) REPORTS.—

(A) IN GENERAL.—The Board from time to time may require any Board supervised investment bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

(i) the company's or subsidiary's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions with depository institution subsidiaries of the holding company; and

(ii) the extent to which the company or subsidiary has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

(B) USE OF EXISTING REPORTS.—

(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that the investment bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

(ii) AVAILABILITY.—An investment bank holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

(C) EXEMPTIONS FROM REPORTING REQUIREMENTS.—

(i) IN GENERAL.—The Board may, by regulation or order, exempt any company or class of companies, under such terms and conditions and for such periods as the Board shall provide in such regulation or order, from the provisions of this paragraph and any regulation prescribed under this paragraph.

(ii) CRITERIA FOR CONSIDERATION.—In making any determination under clause (i) with regard to any exemption under such clause, the Board shall consider, among such other factors as the Board may determine to be appropriate, the following factors:

(I) Whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978) or a foreign regulatory authority of a similar type.

(II) The primary business of the company.

(III) The nature and extent of the domestic and foreign regulation of the activities of the company.

(4) EXAMINATIONS.—

(A) LIMITED USE OF EXAMINATION AUTHORITY.—The Board may make examinations of each Board supervised investment bank holding company and each subsidiary of such company in order to—

(i) inform the Board regarding the nature of the operations and financial condition of the investment bank holding company and its subsidiaries;

(ii) inform the Board regarding—

(I) the financial and operational risks within the investment bank holding company system that may affect any depository institution owned by such holding company; and

(II) the systems of the holding company and its subsidiaries for monitoring and controlling those risks; and

(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any depository institution controlled by the investment bank holding company and any of the company's other subsidiaries.

(B) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope

of any examination of an investment bank holding company under this paragraph to—

(i) the holding company; and

(ii) any subsidiary (other than an insured depository institution subsidiary) of the holding company that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions between such subsidiary and any affiliated depository institution, or the centralization of functions within the holding company system, could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.

(C) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination of depository institutions made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision or the appropriate State depository institution supervisory authority for the purposes of this section.

(D) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and by instead reviewing the reports of examination made of—

(i) any registered broker or dealer or any registered investment adviser by or on behalf of the Commission; and

(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

(i) IN GENERAL.—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any nonpublic information required to be reported under this paragraph, or any information supplied to the Board by any domestic or foreign regulatory agency, that relates to the financial or operational condition of any investment bank holding company or any subsidiary of such company.

(ii) COMPLIANCE WITH REQUESTS FOR INFORMATION.—No provision of this subparagraph shall be construed as authorizing the Board to withhold information from the Congress, or preventing the Board from complying with a request for information from any other Federal department or agency for purposes within the scope of such department's or agency's jurisdiction, or from complying with any order of a court of competent jurisdiction in an action brought by the United States or the Board.

(iii) COORDINATION WITH OTHER LAW.—For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered to be a statute described in subsection (b)(3)(B) of such section.

(iv) DESIGNATION OF CONFIDENTIAL INFORMATION.—In prescribing regulations to carry out the requirements of this subsection, the Board shall designate information described in or obtained pursuant to this paragraph as confidential information.

(F) COSTS.—The cost of any examination conducted by the Board under this section may be assessed against, and made payable by, the investment bank holding company.

(5) CAPITAL ADEQUACY GUIDELINES.—

(A) CAPITAL ADEQUACY PROVISIONS.—Subject to the requirements of, and solely in accordance with, the terms of this paragraph, the Board may adopt capital adequacy rules or guidelines for Board supervised investment bank holding companies.

(B) METHOD OF CALCULATION.—In developing rules or guidelines under this paragraph, the following provisions shall apply:

(i) FOCUS ON DOUBLE LEVERAGE.—The Board shall focus on the use by investment bank holding companies of debt and other liabilities to fund capital investments in subsidiaries.

(ii) NO UNWEIGHTED CAPITAL RATIO.—The Board shall not, by regulation, guideline, order, or otherwise, impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that—

(I) is not a depository institution; and

(II) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority.

(iv) LIMITATION.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that is not a depository institution and that is registered as an investment adviser under the Investment Advisers Act of 1940, except that this clause shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

(v) APPROPRIATE EXCLUSIONS.—The Board shall take full account of—

(I) the capital requirements made applicable to any subsidiary that is not a depository institution by another Federal regulatory authority or State insurance authority; and

(II) industry norms for capitalization of a company's unregulated subsidiaries and activities.

(vi) INTERNAL RISK MANAGEMENT MODELS.—The Board may incorporate internal risk management models of investment bank holding companies into its capital adequacy guidelines or rules and may take account of the extent to which resources of a subsidiary depository institution may be used to service the debt or other liabilities of the investment bank holding company.

(d) NONFINANCIAL ACTIVITIES AND INVESTMENTS.—

(1) AUTHORITY FOR LIMITED AMOUNTS OF NEW ACTIVITIES AND INVESTMENTS.—

(A) IN GENERAL.—Notwithstanding section 4(a), a Board supervised investment bank holding company may engage in activities which are not (or have not been determined to be) financial in nature or incidental to activities which are financial in nature, or acquire and retain ownership and control of the shares of a company engaged in such activities if—

(i) the aggregate annual gross revenues derived from all such activities and of all such companies does not exceed 5 percent of the consolidated annual gross revenues of the investment bank holding company or, in the case of a foreign bank or any company that owns or controls a foreign bank, the aggregate annual gross revenues derived from any such activities in the United States does not exceed 5 percent of the consolidated annual gross revenues of the foreign bank or company in the United States derived from any branch, agency, commercial lending company, or depository institution controlled by the foreign bank or company and any subsidiary engaged in the United States in activities permissible under section 4 or 6 or this subsection;

(ii) the consolidated total assets of any company the shares of which are acquired pursuant to this subsection are less than $750,000,000 at the time the shares are acquired by the investment bank holding company; and

(iii) such company provides notice to the Board within 30 days of commencing the activity or acquiring the ownership or control.

(B) INCLUSION OF GRANDFATHERED ACTIVITIES.—For purposes of determining compliance with the limits contained in subparagraph (A), the gross revenues derived from all activities conducted and companies the shares of which are held under paragraph (2) shall be considered to be derived or held under this paragraph.

(C) REPORT.—No later than 5 years after the date of enactment of the Financial Services Act of 1997, the Board shall submit to the Congress a report regarding the activities conducted and companies held pursuant to this paragraph or section 17(i)(7)(C) of the Securities Exchange Act of 1934 and the effect, if any, that affiliations permitted under those provisions have had on affiliated depository in-

stitutions. The report shall include recommendations regarding the appropriateness of retaining, increasing, or decreasing the limits contained in those provisions. In preparing the report, the Board shall consult with and incorporate the views of the Commission.

(2) GRANDFATHERED ACTIVITIES.—

(A) IN GENERAL.—Notwithstanding paragraph (1)(A) and section 4(a), a company that becomes an investment bank holding company may continue to engage, directly or indirectly, in any activity and may retain ownership and control of shares of a company engaged in any activity if—

(i) on the date of the enactment of the Financial Services Act of 1997, such investment bank holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and

(ii) the company engaged in such activity continues to engage only in the same activities that such company conducted on the date of the enactment of the Financial Services Act of 1997, and other activities permissible under this Act.

(B) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—An investment bank holding company that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of such investment bank holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under section 6(c).

(C) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) or (g) of section 6 may engage in any activity or own any shares pursuant to this paragraph or paragraph (1).

(3) COMMODITIES.—

(A) IN GENERAL.—Notwithstanding section 4(a), an investment bank holding company which was predominately engaged as of January 1, 1997, in securities activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1997, if such investment bank holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1997, in the United States.

(B) LIMITATION.—Notwithstanding paragraph (1)(A)(i), the attributed aggregate investment by an investment bank holding company in activities permitted under this para-

graph and not otherwise permitted for all bank holding companies under this Act may not exceed 5 percent of the capital of the investment bank holding company, except that the Board may increase such percentage of capital by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act.

(C) ATTRIBUTED INVESTMENT AMOUNT.—For purposes of subparagraph (B), the amount of the investment by an investment bank holding company which are attributable to activities described in such subparagraph shall be determined pursuant to regulations issued by the Board which attribute capital on the basis of such activities in relation to all activities of the company.

(4) CROSS MARKETING RESTRICTIONS.—A Board supervised investment bank holding company shall not permit—

(A) any company whose shares it owns or controls pursuant to paragraph (1), (2), or (3) to offer or market any product or service of an affiliated wholesale financial institution; or

(B) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such investment bank holding company pursuant to such paragraphs.

(e) QUALIFICATION OF FOREIGN BANK AS INVESTMENT BANK HOLDING COMPANY.—

(1) IN GENERAL.—Any foreign bank, or any company that owns or controls a foreign bank, that—

(A) operates a branch, agency, or commercial lending company in the United States, including a foreign bank or company that owns or controls a wholesale financial institution; and

(B) owns, controls or is affiliated with a security affiliate that engages in underwriting corporate equity securities,

may request a determination from the Board that such bank or company be treated as a Board supervised investment bank holding company for purposes of subsection (d).

(2) CONDITIONS FOR TREATMENT AS AN INVESTMENT BANK HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as an investment bank holding company unless the bank and company meet and continue to meet the following criteria:

(A) NO INSURED DEPOSITS.—No deposits held directly by a foreign bank or through an affiliate are insured under the Federal Deposit Insurance Act.

(B) CAPITAL STANDARDS.—The foreign bank meets risk-based capital standards comparable to the capital standards required for a wholesale financial institution, giving due regard to the principle of national treatment and equality of competitive opportunity.

(C) TRANSACTION WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any securities affiliate or company in which the foreign

bank (or any company that owns or controls such foreign bank) has invested pursuant to subsection (d) comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the bank were a member bank.

(3) TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.—Any foreign bank which is, or is affiliated with a company which is, treated as an investment bank holding company under this subsection shall be treated as a wholesale financial institution for purposes of subsection (d)(4) of this section and subsections (c)(1)(C) and (c)(3) of section 9B of the Federal Reserve Act, and any such foreign bank or company shall be subject to paragraphs (3), (4), and (5) of section 9B(d) of the Federal Reserve Act, except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

(4) NONAPPLICABILITY OF OTHER EXEMPTION.—Any foreign bank or company which is treated as an investment bank holding company under this subsection shall not be eligible for any exception described in section 2(h).

(5) SUPERVISION OF FOREIGN BANK WHICH MAINTAINS NO BANKING PRESENCE OTHER THAN CONTROL OF A WHOLESALE FINANCIAL INSTITUTION.—A foreign bank that owns or controls a wholesale financial institution but does not operate a branch, agency, or commercial lending company in the United States (and any company that owns or controls such foreign bank) may request a determination from the Board that such bank or company be treated as a Board supervised investment bank holding company for purposes of subsection (d), except that such bank or company shall be subject to the restrictions of paragraph (4) of this subsection.

(6) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the authority of the Board under the International Banking Act of 1978 with respect to the regulation, supervision, or examination of foreign banks and their offices and affiliates in the United States.

(7) APPLICABILITY OF COMMUNITY REINVESTMENT ACT OF 1977.—The branches in the United States of a foreign bank that is, or is affiliated with a company that is, treated as a Board supervised investment bank holding company shall be subject to section 9B(b)(11) of the Federal Reserve Act as if the foreign bank were a wholesale financial institution under such section. The Board and the Comptroller of the Currency shall apply the provisions of sections 803(2), 804, and 807(1) of the Community Reinvestment Act of 1977 to branches of foreign banks which receive only such deposits as are permissible for receipt by a corporation organized under section 25A of the Federal Reserve Act, in the same manner and to the same extent such sections apply to such a corporation.

(f) BOARD BACKUP ENFORCEMENT AND EXAMINATION AUTHORITY.—

(1) ENFORCEMENT AUTHORITY.—

(A) IN GENERAL.—The Board may take any action or initiate any investigation or proceeding under this Act or the Federal Deposit Insurance Act involving any SEC supervised investment bank holding company, any subsidiary of such a company, or any institution-affiliated party of such a company or subsidiary for the purpose of enforcing compliance with the applicable provisions of this Act, the 1970 Amendments to the Bank Holding Company Act of 1956, section 17(i) of the Securities Exchange Act of 1934, the Federal Deposit Insurance Act, or the Federal Reserve Act.

(B) PRIOR CONSULTATION AND OPPORTUNITY TO CORRECT.—

(i) NOTICE OF PROPOSED ACTION.—At least 30 days before initiating any action, investigation, or proceeding under this subsection (or such shorter period as the Board and Commission may agree), the Board shall provide the Commission with notice of the Board's proposed action, an explanation of the basis for such proposed action, and a recommendation for Commission action.

(ii) BOARD ACTION.—If, after receipt of notice under clause (i), the Commission does not take the actions recommended by the Board or other actions deemed appropriate by the Board, the Board may initiate an action, investigation or proceeding under this subsection.

(iii) EXIGENT CIRCUMSTANCES.—The Board may exercise its authority under paragraph (1)(A) without regard to the time period set forth in clause (i) if the Board finds that such action is necessary or appropriate in light of exigent circumstances.

(2) BACKUP EXAMINATION.—

(A) IN GENERAL.—In circumstances where examinations of Board supervised bank holding companies and subsidiaries of such holding companies by the Board are permissible under subparagraphs (A) and (B) of section 5(c)(2), the Board may make examinations of any SEC supervised investment bank holding company and any subsidiary of such company for the purpose of monitoring and enforcing compliance by the company or any subsidiary of such company with the laws described in subparagraph (E).

(B) RESTRICTED FOCUS.—The Board shall limit the focus and scope of any examination permitted under subparagraph (A) to those transactions, policies, procedures, systems, or records that are reasonably necessary to monitor and enforce compliance by the company or any subsidiary of the company with the laws described in subparagraph (E).

(C) DEFERENCE TO OTHER EXAMINATIONS.—To the fullest extent possible, the Board shall address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examinations made of—

(i) any registered broker or dealer or registered investment adviser by or on behalf of the Commission; and

(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

(D) NOTIFICATION.—To the fullest extent possible, the Board shall notify the Commission before conducting any examination of a SEC supervised investment bank holding company.

(E) DEFINITION.—For purposes of this subsection, the laws described in this subparagraph are this Act, section 17(i) of the Securities Exchange Act of 1934, and all Federal laws for which the Board has enforcement authority with respect to State member banks or bank holding companies or their subsidiaries.

(g) INFORMATION SHARING.—The Board and the Comptroller of the Currency (in the case of a national wholesale financial institution) shall, upon request by the Commission, provide to the Commission such reports, records, or other information, including reports of examination or other confidential supervisory information, that the Board or the Comptroller has available concerning a wholesale financial institution (or any subsidiary of a wholesale financial institution) that is controlled by a SEC supervised investment bank holding company to assist the Commission in carrying out its responsibilities under this Act or the Federal securities laws.

(h) DEFERENCE TO COMMISSION.—The Board shall defer to the Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws relating to the activities, conduct and operations of registered brokers, dealers, investment advisers, and investment companies.

(i) CONSULTATION.—The Board shall consult with the Commission concerning the exercise of the Board's authority and responsibility under section 6(c) to assure, to the fullest extent possible, the consistency of interpretation and the maintenance of competitive equality.

SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.

(a) LIMITATION ON DIRECT ACTION.—

(1) IN GENERAL.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a regulated subsidiary of a bank holding company unless the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—

(A) the financial safety, soundness, or stability of an affiliated depository institution; or

(B) the domestic or international payment system.

(2) CRITERIA FOR BOARD ACTION.—The Board shall not take action otherwise permitted under paragraph (1) unless the Board finds that it is not reasonably possible to effectively pro-

tect against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.

(b) LIMITATION ON INDIRECT ACTION.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a financial holding company or an investment bank holding company where the purpose or effect of doing so would be to take action indirectly against or with respect to a regulated subsidiary that may not be taken directly against or with respect to such subsidiary in accordance with subsection (a).

(c) ACTIONS SPECIFICALLY AUTHORIZED.—Notwithstanding subsection (a), the Board may take action under this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a regulated subsidiary with Federal law that the Board has specific jurisdiction to enforce against such subsidiary.

(d) REGULATED SUBSIDIARY DEFINED.—For purposes of this section, the term "regulated subsidiary" means any company that is not a bank holding company and is—

(1) a broker or dealer registered under the Securities Exchange Act of 1934;

(2) an investment adviser registered under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

(3) an investment company registered under the Investment Company Act of 1940;

(4) an insurance company or an insurance agency subject to supervision by a State insurance commission, agency, or similar authority; or

(5) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.

SAVING PROVISION

SEC. 11. (a) * * *

(b) ANTITRUST REVIEW.—

(1) IN GENERAL.—The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated be-

fore the thirtieth calendar day after the date of approval by the Board or[, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors,] such shorter period of time [as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.] *as may be prescribed by the appropriate antitrust agency.* Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 3 might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. [In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act.] Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

* * * * * * *

[(c) In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 3 of this Act, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.]

[(d)] *(c)* Any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act which was consummated at any time prior or subsequent to May 9, 1956, and as to which no litigation was initiated by the Attorney General prior to the date of enactment of this amendment, shall be conclusively presumed not to have been in violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

[(e) Any court having pending before it on or after the date of enactment of this amendment any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisi-

tion, merger, or consolidation of the kind described in section 3(a) of this Act shall apply the substantive rule of law set forth in section 3 of this Act.]

[(f)] *(d)* For the purposes of this section, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in pari materia.

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BANK HOLDING COMPANY ACT AMENDMENTS OF 1970

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TITLE I—BANK HOLDING COMPANIES

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SEC. 105. With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 3 of the Bank Holding Company Act of 1956[, to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act,] or to engage in an activity otherwise prohibited under section 106 of this Act, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 9 of such Act of 1956 or as otherwise provided by law.

SEC. 106. (a) As used in this section, the terms "bank", "bank holding company", "subsidiary", and "Board" have the meaning ascribed to such terms in section 2 of the Bank Holding Company Act of 1956. For purposes of this section only, the term "company", as used in section 2 of the Bank Holding Company Act of 1956, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term "trust service" means any service customarily performed by a bank trust department. *For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.*

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SECTION 4 OF THE BANK SERVICE COMPANY ACT

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PERMISSIBLE BANK SERVICE COMPANY ACTIVITIES FOR OTHER PERSONS

SEC. 4. (a) * * *

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(f) Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the geographic location of banks to the extent that those laws are applicable to an activity authorized by this subsection, a bank service company may perform at any geographic location any service, other than deposit taking, that the Board has determined, by regulation, to be permissible for a bank holding company under section 4(c)(8) of the Bank Holding Company Act[.] *as of the day before the date of enactment of the Financial Services Act of 1997.*

SECTION 109 OF THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994

SEC. 109. PROHIBITION AGAINST DEPOSIT PRODUCTION OFFICES.

(a) * * *

* * * * * * *

(d) APPLICATION.—This section shall apply with respect to any interstate branch established or acquired in a host State pursuant to this title*, the Financial Services Act of 1997,* or any amendment made by this title *or such Act* to any other provision of law.

(e) DEFINITIONS.—For the purposes of this section, the following definitions shall apply:

(1) * * *

* * * * * * *

(4) INTERSTATE BRANCH.—The term "interstate branch" means a branch established pursuant to this title or any amendment made by this title to any other provision of law *and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956).*

* * * * * * *

FEDERAL DEPOSIT INSURANCE ACT

SECTION 1. FEDERAL DEPOSIT INSURANCE CORPORATION.

(a) ESTABLISHMENT OF CORPORATION.—There is hereby established a Federal Deposit Insurance Corporation (hereinafter referred to as the "Corporation") which shall insure, as hereinafter provided, the deposits of all banks [and savings associations] which are entitled to the benefits of insurance under this Act, and which shall have the powers hereinafter granted.

* * * * * * *

SEC. 2. MANAGEMENT.

(a) BOARD OF DIRECTORS.—

[(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

[(A) 1 of whom shall be the Comptroller of the Currency;

[(B) 1 of whom shall be the Director of the Office of Thrift Supervision; and

[(C) 3 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience.]

(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

(A) 1 of whom shall be the Comptroller of the Currency; and

(B) 4 of whom shall be appointed by the President, and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience.

* * * * * * *

(d) VACANCY.—

(1) IN GENERAL.—Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made.

(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Comptroller of the Currency [or the office of Director of the Office of Thrift Supervision] and pending the appointment of a successor, or during the absence or disability of the Comptroller [or such Director], the acting Comptroller of the Currency [or the acting Director of the Office of Thrift Supervision, as the case may be], shall be a member of the Board of Directors in the place of the Comptroller [or Director].

* * * * * * *

(f) STATUS OF EMPLOYEES.—

(1) * * *

(2) DEFINITION.—For purposes of this subsection, the term "employee of the Corporation" includes any employee of the Office of the Comptroller of the Currency [or of the Office of Thrift Supervision] who serves as a deputy or assistant to a member of the Board of Directors of the Corporation in connection with activities of the Corporation.

* * * * * * *

SEC. 3. As used in this Act—

(a) DEFINITIONS OF BANK AND RELATED TERMS.—

(1) * * *

[(2) STATE BANK.—The term "State bank" means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which—

[(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

[(B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia (except a national bank),

including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the

day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.]

(2) STATE BANK.—

(A) IN GENERAL.—The term "State bank" means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating in substantially the same manner as an industrial bank), building and loan association, savings and loan association, homestead association, cooperative bank, or other banking institution—

(i) which is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

(ii) which—

(I) is incorporated under the laws of any State;

(II) is organized and operating according to the laws of the State in which such institution is chartered or organized; or

(III) is operating under the Code of Law for the District of Columbia (except a national bank).

(B) CERTAIN INSURED BANKS INCLUDED.—The term "State bank" includes any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(C) CERTAIN UNINSURED BANKS EXCLUDED.—The term "State bank" shall not include any cooperative bank or other unincorporated bank the deposits of which were not insured by the Corporation on the day before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

* * * * * * *

(b) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERMS.—

(1) SAVINGS ASSOCIATION.—The term "savings association" means—

[(A) any Federal savings association;]

[(B)] *(A)* any State savings association; and

[(C)] *(B)* any corporation (other than a bank) that the Board of Directors [and the Director of the Office of Thrift Supervision jointly determine] *determines* to be operating in substantially the same manner as a savings association.

[(2) FEDERAL SAVINGS ASSOCIATION.—The term "Federal savings association" means any Federal savings association or Federal savings bank which is chartered under section 5 of the Home Owners' Loan Act.]

[(3)] *(2)* STATE SAVINGS ASSOCIATION.—The term "State savings association" means—

(A) any building and loan association, savings and loan association, or homestead association; or

(B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2)),

which is organized and operating according to the laws of the State (as defined in subsection (a)(3)) in which it is chartered or organized.

* * * * * * *

(l) The term "deposit" means—

(1) * * *

* * * * * * *

(5) such other obligations of a bank [or savings association] as the Board of Directors, after consultation with the Comptroller of the Currency, [Director of the Office of Thrift Supervision], and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this Act or be included as part of the total deposits or of an insured deposit:

(A) any obligation of a depository institution which is carried on the books and records of an office of such bank [or savings association] located outside of any State, unless—

(i) * * *

* * * * * * *

(q) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" means—

[(1) the Comptroller of the Currency, in the case of any national banking association, any District bank, or any Federal branch or agency of a foreign bank;]

(1) The Comptroller of the Currency in the case of—

(A) any national banking association, any District bank, or any Federal branch or agency of a foreign bank; and

(B) supervisory or regulatory proceedings arising from the authority given to the Comptroller under section 5133B of the Revised Statutes of the United States.

(2) the Board of Governors of the Federal Reserve System, in the case of—

[(A) any State member insured bank (except a District bank),]

(A) any State member insured bank (except a District bank) and any wholesale financial institution as authorized pursuant to section 9B of the Federal Reserve Act;

* * * * * * *

(F) any bank holding company and any subsidiary of a bank holding company (other than a bank); *and*

(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a District bank), or a foreign bank having an insured branch[; and].

[(4) the Director of the Office of Thrift Supervision in the case of any savings association or any savings and loan holding company.]

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution.

* * * * * * *

SEC. 4. (a) CONTINUATION OF INSURANCE.—

[(1) BANKS.—] Each bank, which is an insured depository institution on the effective date of this amendment, shall be and continue to be, without application or approval, an insured depository institution and shall be subject to the provisions of this Act.

[(2) SAVINGS ASSOCIATIONS.—Each savings association the accounts of which were insured by the Federal Savings and Loan Insurance Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall be, without application or approval, an insured depository institution.]

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SEC. 7. (a)(1) * * *

(2)(A) The Corporation and, with respect to any State depository institution, any appropriate State bank supervisor for such institution, shall have access to reports of examination made by, and reports of condition made to, the Comptroller of the Currency, [the Director of the Office of Thrift Supervision,] the Federal Housing Finance Board, any Federal home loan bank, or any Federal Reserve bank and to all revisions of reports of condition made to any of them, and they shall promptly advise the Corporation of any revisons or changes in respect to deposit liabilities made or required to be made in any report of condition. The Corporation may accept any report made by or to any commission, board, or authority having supervision of a depository institution, and may furnish to the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, any Federal home loan bank, to any Federal Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to, the Corporation.

(B) ADDITIONAL REPORTS.—The Board of Directors may from time to time require any insured depository institution to file such additional reports as the Corporation, after agreement with the Comptroller of the Currency, *and* the Board of Governors of the Federal Reserve System, [and the Director of the Office of Thrift Supervision,] as appropriate, may deem advisable for insurance purposes.

(3) Each insured depository institution shall make to the appropriate Federal banking agency 4 reports of condition annually upon dates which shall be selected by the Chairman of the Board of Directors, the Comptroller of the Currency, *and* the Chairman of the Board of Governors of the Federal Reserve System[, and the Director of the Office of Thrift Supervision]. The dates selected shall be the same for all insured depository institutions, except that when any of said reporting dates is a nonbusiness day for any depository institution, the preceding business day shall be its reporting date. Two dates shall be selected within the semiannual period of January to June inclusive, and the reports on such dates shall be the

basis for the certified statement to be filed in July pursuant to subsection (c) of this section, and two dates shall be selected within the semiannual period of July to December inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in January pursuant to subsection (c) of this section. The deposit liabilities shall be reported in said reports of condition in accordance with and pursuant to paragraphs (4) and (5) of this subsection, and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting depository institution to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of conditions shall be attested by the signatures of at least two directors or trustees of the reporting depository institution other than the officer making such declaration, with a declaration that the report has been examined by them and to be the best of their knowledge and belief is true and correct. At the time of making said reports of condition each insured depository institution shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks or savings associations under its jurisdiction to make additional reports of condition at any time.

* * * * * * *

(7) The Board of Directors, after consultation with the Comptroller of the Currency, [the Director of the Office of Thrift Supervision,] and the Board of Governors of the Federal Reserve System, may by regulation define the terms "cash items" and "process of collection", and shall classify deposits as "time," "savings," and "demand" deposits, for the purposes of this section.

* * * * * * *

[(n) COLLECTIONS ON BEHALF OF THE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—When requested by the Director of the Office of Thrift Supervision, the Corporation shall collect on behalf of the Director assessments on savings associations levied by the Director under section 9 of the Home Owners' Loan Act. The Corporation shall be reimbursed for its actual costs for the collection of such assessments. Any such assessments by the Director shall be in addition to any amounts assessed by the Corporation, the Financing Corporation, and the Resolution Funding Corporation.]

SEC. 8. (a) TERMINATION OF INSURANCE.—

[(1) VOLUNTARY TERMINATION.—Any insured depository institution which is not—

[(A) a national member bank;

[(B) a State member bank;

[(C) a Federal branch;

[(D) a Federal savings association; or

[(E) an insured branch which is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978,

may terminate such depository institution's status as an insured depository institution if such insured institution provides written notice to the Corporation of the institution's intent to terminate such status not less than 90 days before the effective date of such termination.]

[(2)] *(1)* INVOLUNTARY TERMINATION.—

(A) NOTICE TO PRIMARY REGULATOR.—If the Board of Directors determines that—

(i) * * *

* * * * * * *

[(3)] *(2)* HEARING; TERMINATION.—If, on the basis of the evidence presented at a hearing before the Board of Directors (or any person designated by the Board for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code, and the written findings of the Board of Directors (or such person) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under paragraph (2)(B) or subsection (w) has been established, the Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.

[(4)] *(3)* APPEARANCE; CONSENT TO TERMINATION.—Unless the depository institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured depository institution and termination of such status thereupon may be ordered.

[(5)] *(4)* JUDICIAL REVIEW.—Any insured depository institution whose insured status has been terminated by order of the Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section.

[(6)] *(5)* PUBLICATION OF NOTICE OF TERMINATION.—The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last address of record on the books of the depository institution, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

[(7)] *(6)* TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—After the termination of the insured status of any depository institution under the provisions of this subsection, the insured deposits of each depositor in the depository institution on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of at least 6 months or up to 2 years, within the discretion of the Board of Directors, to be insured, and the depository institution shall continue to pay to the Corporation assessments as in the case of an insured depository institution during such period. No additions to any such deposits and no new deposits in such depository institution made after the date

of such termination shall be insured by the Corporation, and the depository institution shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after such date are not so insured. Such depository institution shall, in all other respects, be subject to the duties and obligations of an insured depository institution for the period referred to in the 1st sentence from the date of such termination, and in the event that such depository institution shall be closed on account of inability to meet the demands of its depositors within such period, the Corporation shall have the same powers and rights with respect to such depository institution as in case of an insured depository institution.

[(8)] *(7)* TEMPORARY SUSPENSION OF INSURANCE.—

(A) IN GENERAL.—If the Board of Directors initiates a termination proceeding under paragraph (2), and the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a savings association to which subparagraph (B) applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution.

[(B) SPECIAL RULE FOR CERTAIN SAVINGS INSTITUTIONS.—

[(i) CERTAIN GOODWILL INCLUDED IN TANGIBLE CAPITAL.—In determining the tangible capital of a savings association for purposes of this paragraph, the Board of Directors shall include goodwill to the extent it is considered a component of capital under section 5(t) of the Home Owners' Loan Act. Any savings association which would be subject to a suspension order under subparagraph (A) but for the operation of this subparagraph, shall be considered by the Corporation to be a "special supervisory association".

[(ii) SUSPENSION ORDER.—The Corporation may issue a temporary order suspending deposit insurance on all deposits received by a special supervisory association whenever the Board of Directors determines that—

[(I) the capital of such association, as computed utilizing applicable accounting standards, has suffered a material decline;

[(II) that such association (or its directors or officers) is engaging in an unsafe or unsound practice in conducting the business of the association;

[(III) that such association is in an unsafe or unsound condition to continue operating as an insured association; or

[(IV) that such association (or its directors or officers) has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by a Federal banking agency, or any written

agreement including a capital improvement plan entered into with any Federal banking agency, or that the association has failed to enter into a capital improvement plan which is acceptable to the Corporation within the time period set forth in section 5(t) of the Home Owners' Loan Act.

Nothing in this paragraph limits the right of the Corporation or the Director of the Office of Thrift Supervision to enforce a contractual provision which authorizes the Corporation or the Director of the Office of Thrift Supervision, as a successor to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board, to require a savings association to write down or amortize goodwill at a faster rate than otherwise required under this Act or under applicable accounting standards.]

[(C)] *(B)* EFFECTIVE PERIOD OF TEMPORARY ORDER.—Any order issued under subparagraph (A) shall become effective not earlier than 10 days from the date of service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized hereunder, such temporary order shall remain effective and enforceable until an order of the Board under paragraph (3) becomes final or until the Corporation dismisses the proceedings under paragraph (3).

[(D)] *(C)* JUDICIAL REVIEW.—Before the close of the 10-day period beginning on the date any temporary order has been served upon an insured depository institution under subparagraph (A), such institution may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the home office of the institution is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction.

[(E)] *(D)* CONTINUATION OF INSURANCE FOR PRIOR DEPOSITS.—The insured deposits of each depositor in such depository institution on the effective date of the order issued under this paragraph, minus all subsequent withdrawals from any deposits of such depositor, shall continue to be insured, subject to the administrative proceedings as provided in this Act.

[(F)] *(E)* PUBLICATION OF ORDER.—The depository institution shall give notice of such order to each of its depositors in such manner and at such times as the Board of Directors may find to be necessary and may order for the protection of depositors.

[(G)] *(F)* NOTICE BY CORPORATION.—If the Corporation determines that the depository institution has not substantially complied with the notice to depositors required by the Board of Directors, the Corporation may provide such notice in such manner as the Board of Directors may find to be necessary and appropriate.

[(H)] *(G)* LACK OF NOTICE.—Notwithstanding subparagraph (A), any deposit made after the effective date of a suspension order issued under this paragraph shall remain insured to the extent that the depositor establishes that—

(i) such deposit consists of additions made by automatic deposit the depositor was unable to prevent; or

(ii) such depositor did not have actual knowledge of the suspension of insurance.

[(9)] *(8)* FINAL DECISIONS TO TERMINATE INSURANCE.—Any decision by the Board of Directors to—

(A) issue a temporary order terminating deposit insurance; or

(B) issue a final order terminating deposit insurance (other than under subsection (p) or (q));

shall be made by the Board of Directors and may not be delegated.

[(10)] *(9)* LOW- TO MODERATE-INCOME HOUSING LENDER.—In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low- to moderate-income housing loans.

(b)(1) * * *

* * * * * * *

[(9) EXPANSION OF AUTHORITY TO SAVINGS AND LOAN AFFILIATES AND ENTITIES.—Subsections (a) through (s) and subsection (u) shall apply to any savings and loan holding company and to any subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company, to any service corporation of a savings association and to any subsidiary of such service corporation, whether wholly or partly owned, in the same manner as such subsections apply to a savings association.]

[(10)] *(9)* STANDARD FOR CERTAIN ORDERS.—No authority under this subsection or subsection (c) to prohibit any institution-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the appropriate Federal banking agency meets the standards of Rule 65 of the Federal Rules of Civil Procedure, without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

* * * * * * *

(o) Whenever the insured status of a State member bank shall be terminated by action of the Board of Directors, the Board of Governors of the Federal Reserve System shall terminate its membership in the Federal Reserve System in accordance with the provisions of section 9 of the Federal Reserve Act, and whenever the insured status of a national member bank shall be so terminated the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation. Except as provided in subsection (d) of section 4, whenever a member bank shall cease to be a member of the Federal Reserve System, its status as an insured depository institution shall, without notice or other action by the

Board of Directors, terminate on the date the bank shall cease to be a member of the Federal Reserve System, with like effect as if its insured status had been terminated on said date by the Board of Directors after proceedings under subsection (a) of this section. [Whenever the insured status of an insured Federal savings bank shall be terminated by action of the Board of Directors, the Director of the Office of Thrift Supervision shall appoint a receiver for the bank, which shall be the Corporation.]

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(w) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

(1) * * *

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(3) NOTICE TO STATE BANKING SUPERVISOR AND PUBLIC.—When the order to terminate insured status initiated pursuant to this subsection is final, the Board of Directors shall—

(A) notify the State banking supervisor of any State depository institution described in paragraph (1) [and the Office of Thrift Supervision, where appropriate], at least 10 days prior to the effective date of the order of termination of the insured status of such depository institution, including a State branch of a foreign bank; and

* * * * * * *

SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION.

(a) IN GENERAL.—Except as provided in subsection (b), an insured State bank or a national bank may voluntarily terminate such bank's status as an insured depository institution in accordance with regulations of the Corporation if—

(1) the bank provides written notice of the bank's intent to terminate such insured status—

(A) to the Corporation and the Board of Governors of the Federal Reserve System not less than 6 months before the effective date of such termination; and

(B) to all depositors at such bank, not less than 6 months before the effective date of the termination of such status; and

(2) either—

(A) the deposit insurance fund of which such bank is a member equals or exceeds the fund's designated reserve ratio as of the date the bank provides a written notice under paragraph (1) and the Corporation determines that the fund will equal or exceed the applicable designated reserve ratio for the 2 semiannual assessment periods immediately following such date; or

(B) the Corporation and the Board of Governors of the Federal Reserve System approved the termination of the bank's insured status and the bank pays an exit fee in accordance with subsection (e).

(b) EXCEPTION.—Subsection (a) shall not apply with respect to—

(1) an insured savings association; or

(2) an insured branch that is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978.

(c) ELIGIBILITY FOR INSURANCE TERMINATED.—Any bank that voluntarily elects to terminate the bank's insured status under subsection (a) shall not be eligible for insurance on any deposits or any assistance authorized under this Act after the period specified in subsection (f)(1).

(d) INSTITUTION MUST BECOME WHOLESALE FINANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING ACTIVITIES.—Any depository institution which voluntarily terminates such institution's status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is a wholesale financial institution subject to section 9B of the Federal Reserve Act.

(e) EXIT FEES.—

(1) IN GENERAL.—Any bank that voluntarily terminates such bank's status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of the amount (if any) which would be required to restore the relevant deposit insurance fund to the fund's designated reserve ratio as of the date the bank provides a written notice under subsection (a)(1).

(2) PROCEDURES.—The Corporation shall prescribe, by regulation, procedures for assessing any exit fee under this subsection.

(f) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—

(1) TRANSITION PERIOD.—The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the bank's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.

(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank's depositors during such period, the Corporation shall have the same powers and rights with respect to such bank as in the case of an insured depository institution.

(g) ADVERTISEMENTS.—

(1) IN GENERAL.—A bank that voluntarily terminates the bank's insured status under this section shall not advertise or hold itself out as having insured deposits, except that the bank

may advertise the temporary insurance of deposits under subsection (f) if, in connection with any such advertisement, the advertisement also states with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.

(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank's insured status under this section shall be accompanied by a conspicuous, prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.

(h) NOTICE REQUIREMENTS.—

(1) NOTICE TO THE CORPORATION.—The notice required under subsection (a)(1)(A) shall be in such form as the Corporation may require.

(2) NOTICE TO DEPOSITORS.—The notice required under subsection (a)(1)(B) shall be—

(A) sent to each depositor's last address of record with the bank; and

(B) in such manner and form as the Corporation finds to be necessary and appropriate for the protection of depositors.

(i) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.

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SEC. 10. (a) * * *

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(c) In connection with examinations of insured depository institutions and any State nonmember bank, [savings association,] or other institution making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, the appropriate Federal banking agency, or its designated representatives, are authorized to administer oaths and affirmations, and to examine and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any such bank or institution or affiliate thereof, and to exercise such other powers as are set forth in section 8(n) of this Act.

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SEC. 11. (a) * * *

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(c) APPOINTMENT OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) * * *

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[(6) APPOINTMENT BY DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

[(A) CONSERVATOR.—The Corporation or the Resolution Trust Corporation may, at the discretion of the Director of the Office of Thrift Supervision, be appointed conservator and the Corporation may accept any such appointment.

[(B) RECEIVER.—Whenever the Director of the Office of Thrift Supervision appoints a receiver under the provisions of subparagraph (A) or (C) of section 5(d)(2) of the Home Owners' Loan Act for the purpose of liquidation or winding up any savings association's affairs—

[(i) before such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act, the Resolution Trust Corporation shall be appointed;

[(ii) on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act, the Resolution Trust Corporation shall be appointed if the Resolution Trust Corporation had been placed in control of the depository institution at any time before such date; and

[(iii) on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act, the Corporation shall be appointed unless the Resolution Trust Corporation is required to be appointed under clause (ii).]

[(7)] *(6)* JUDICIAL REVIEW.—If the Corporation appoints itself as conservator or receiver under paragraph (4), the insured State depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to remove itself as such conservator or receiver, and the court shall, upon the merits, dismiss such action or direct the Corporation to remove itself as such conservator or receiver.

[(8)] *(7)* REPLACEMENT OF CONSERVATOR OF STATE DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—In the case of any insured State depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4), the Corporation may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

(B) REPLACEMENT TREATED AS REMOVAL OF INCUMBENT.—The replacement of a conservator with a receiver under subparagraph (A) shall be treated as the removal of the Corporation as conservator.

(C) RIGHT OF REVIEW OF ORIGINAL APPOINTMENT NOT AFFECTED.—The replacement of a conservator with a receiver under subparagraph (A) shall not affect any right of the insured State depository institution to obtain review, pur-

suant to paragraph (7), of the original appointment of the conservator.

[(9)] *(8)* APPROPRIATE FEDERAL BANKING AGENCY MAY APPOINT CORPORATION AS CONSERVATOR OR RECEIVER FOR INSURED STATE DEPOSITORY INSTITUTION TO CARRY OUT SECTION 38.—

(A) IN GENERAL.—The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

(i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and

(ii) the appointment is necessary to carry out the purpose of section 38.

(B) NONDELEGATION.—The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

[(10)] *(9)* CORPORATION MAY APPOINT ITSELF AS CONSERVATOR OR RECEIVER FOR INSURED DEPOSITORY INSTITUTION TO PREVENT LOSS TO DEPOSIT INSURANCE FUND.—The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that—

(A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

(B) the appointment is necessary to reduce—

(i) the risk that the deposit insurance fund would incur a loss with respect to the insured depository institution, or

(ii) any loss that the deposit insurance fund is expected to incur with respect to that institution.

[(11)] *(10)* APPROPRIATE FEDERAL BANKING AGENCY SHALL NOT APPOINT CONSERVATOR UNDER CERTAIN PROVISIONS WITHOUT GIVING CORPORATION OPPORTUNITY TO APPOINT RECEIVER.—The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation's consent unless the agency has given the Corporation 48 hours notice of the agency's intention to appoint the conservator and the grounds for the appointment.

[(12)] *(11)* DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to—

(A) the appointment of the Corporation or the Resolution Trust Corporation as conservator or receiver for that institution; or

(B) an acquisition or combination under section 38(f)(2)(A)(iii).

[(13)] *(12)* ADDITIONAL POWERS.—In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution—

(A) this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

(B) the Corporation as receiver of the institution may—

(i) liquidate the institution in an orderly manner; and

(ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.

(d) POWERS AND DUTIES OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) GENERAL POWERS.—

(A) * * *

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(F) ORGANIZATION OF NEW INSTITUTIONS.—The Corporation may, as [receiver—

[(i) with respect to savings associations and by application to the Director of the Office of Thrift Supervision, organize a new Federal savings association to take over such assets or such liabilities as the Corporation may determine to be appropriate; and

[(ii) with] *receiver with* respect to any insured bank, organize a new national bank under subsection (m) or a bridge bank under subsection (n).

* * * * * * *

(17) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Corporation, as conservator or receiver for any insured depository institution, and any conservator appointed by the Comptroller of the Currency [or the Director of the Office of Thrift Supervision] may avoid a transfer of any interest of an institution-affiliated party, or any person who the Corporation or conservator determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation or conservator was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured depository institu-

tion, the Corporation or other conservator, or any other appropriate Federal banking agency.

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(18) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (19), any court of competent jurisdiction may, at the request of—

(A) * * *

(B) any conservator appointed by the Comptroller of the Currency [or the Director of the Office of Thrift Supervision],

issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets.

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SEC. 13. (a) * * *

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[(k) EMERGENCY ACQUISITIONS.—

[(1) IN GENERAL.—

[(A) ACQUISITIONS AUTHORIZED.—

[(i) TRANSACTIONS DESCRIBED.—Notwithstanding any provision of State law, upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, the Corporation, in its discretion and if it determines such authorization would lessen the risk to the Corporation, may authorize—

[(I) a savings association that is eligible for assistance pursuant to subsection (c) to merge or consolidate with, or to transfer its assets and liabilities to, any other savings association or any insured bank,

[(II) any other savings association to acquire control of such savings association, or

[(III) any company to acquire control of such savings association or to acquire the assets or assume the liabilities thereof.

The Corporation may not authorize any transaction under this subsection unless the Corporation determines that the authorization will not present a substantial risk to the safety or soundness of the savings association to be acquired or any acquiring entity.

[(ii) TERMS OF TRANSACTIONS.—Mergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the Corporation shall provide.

[(iii) APPROVAL BY APPROPRIATE AGENCY.—Where otherwise required by law, transactions under this subsection must be approved by the appropriate Federal banking agency of every party thereto.

[(iv) ACQUISITIONS BY SAVINGS ASSOCIATIONS.—Any Federal savings association that acquires another savings association pursuant to clause (i) may, with the concurrence of the Director of the Office of Thrift Supervision, hold that savings association as a subsidiary notwithstanding the percentage limitations of section 5(c)(4)(B) of the Home Owners' Loan Act.

[(v) DUAL SERVICE.—Dual service by a management official that would otherwise be prohibited under the Depository Institution Management Interlocks Act may, with the approval of the Corporation, continue for up to 10 years.

[(vi) CONTINUED APPLICABILITY OF CERTAIN STATE RESTRICTIONS.—Nothing in this subsection overrides or supersedes State laws restricting or limiting the activities of a savings association on behalf of another entity.

[(B) CONSULTATION WITH STATE OFFICIAL.—

[(i) CONSULTATION REQUIRED.—Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State official having jurisdiction of the acquired institution.

[(ii) PERIOD FOR STATE RESPONSE.—The official shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

[(iii) APPROVAL OVER OBJECTION OF STATE OFFICIAL.—If the official objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent or more of the voting members of the Board of Directors. The Corporation shall provide to the official, as soon as practicable, a written certification of its determination.

[(2) SOLICITATION OF OFFERS.—

[(A) IN GENERAL.—In considering authorizations under this subsection, the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the savings association.

[(B) MINORITY-CONTROLLED INSTITUTIONS.—In the case of a minority-controlled depository institution, the Corporation shall seek an offer from other minority-controlled depository institutions before seeking an offer from other persons or entities.

[(3) DETERMINATION OF COSTS.—In determining the cost of offers under this subsection, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers.

[(4) BRANCHING PROVISIONS.—

[(A) IN GENERAL.—If a merger, consolidation, transfer, or acquisition under this subsection involves a savings association eligible for assistance and a bank or bank holding company, a savings association may retain and operate any existing branch or branches or any other existing facilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association that is not affiliated with a bank holding company and the home office of which is located in the same State.

[(B) RESTRICTIONS.—

[(i) IN GENERAL.—Notwithstanding subparagraph (A), if—

[(I) a savings association described in such subparagraph does not have its home office in the State of the bank holding company bank subsidiary, and

[(II) such association does not qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986, or does not meet the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify,

such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the Savings Association Insurance Fund member is located.

[(ii) TRANSITION PERIOD.—The Corporation, for good cause shown, may allow a savings association up to 2 years to comply with the requirements of clause (i).

[(5) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

[(A) ASSISTANCE PROPOSALS.—The Corporation shall consider proposals by Savings Association Insurance Fund members for assistance pursuant to subsection (c) before grounds exist for appointment of a conservator or receiver for such member under the following circumstances:

[(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

[(I) that grounds for appointment of a conservator or receiver exist or likely will exist in the future unless the member's tangible capital is increased;

[(II) that it is unlikely that the member can achieve positive tangible capital without assistance; and

[(III) that providing assistance pursuant to the member's proposal would be likely to lessen the risk to the Corporation.

[(ii) OTHER CRITERIA.—The member meets the following criteria:

[(I) Before enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the member was solvent under applicable

regulatory accounting principles but had negative tangible capital.

[(II) The member's negative tangible capital position is substantially attributable to its participation in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons.

[(III) The member is a qualified thrift lender (as defined in section 10(m) of the Home Owners' Loan Act) or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons were excluded from the member's total assets.

[(IV) The appropriate Federal banking agency has determined that the member's management is competent and has complied with applicable laws, rules, and supervisory directives and orders.

[(V) The member's management did not engage in insider dealing or speculative practices or other activities that jeopardized the member's safety and soundness or contributed to its impaired capital position.

[(VI) The member's offices are located in an economically depressed region.

[(B) CORPORATION CONSIDERATION OF ASSISTANCE PROPOSAL.—If a member meets the requirements of clauses (i) and (ii) of subparagraph (A), the Corporation shall consider providing direct financial assistance.

[(C) ECONOMICALLY DEPRESSED REGION DEFINED.—For purposes of this paragraph, the term "economically depressed region" means any geographical region which the Corporation determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.]

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SEC. 18. (a) * * *

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(c)(1) * * *

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be—

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank); *and*

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank [(except a District bank or a savings bank supervised by the Director of the Office of Thrift Supervision); and] *(except a District bank).*

[(D) the Director of the Office of Thrift Supervision if the acquiring, assuming, or resulting institution is to be a savings association.]

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a "merger transaction") shall, unless the responsible agency finds that it must act immediately in order to prevent the probable default of one of the banks or savings associations involved, be published—

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals [during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection], and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

[(4) In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to prevent the probable failure of one of the banks or savings associations involved, shall request reports on the competitive factors involved from the Attorney General and the other Federal banking agencies referred to in this subsection. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other Federal banking agencies that an emergency exists requiring expeditious action. Notwithstanding the preceding sentence, a banking agency shall not be required to file a report requested by the responsible agency under this paragraph if such banking agency advises the responsible agency by the applicable date under the preceding sentence that the report is not necessary because none of the effects described in paragraph (5) are likely to occur as a result of the transaction.

[(5) The responsible agency shall not approve—

[(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

[(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the

transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

[(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the banks or savings associations involved and reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General and the other Federal banking agencies of the existence of an emergency requiring expeditious action and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.]

(4) FACTORS TO BE CONSIDERED.—In determining whether to approve a transaction, the responsible agency shall in every case take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

(5) NOTICE TO ATTORNEY GENERAL.—The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the responsible agency has found that it must act immediately in order to prevent the probable failure of one of the banks involved, the transaction may be consummated immediately upon approval by the agency. If the responsible agency has notified the other Federal banking agencies referred to in this section of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within 10 days, the transaction may not be consummated before the 5th calendar day after the date of approval of the responsible agency. In all other cases, the transaction may not be consummated before the 30th calendar day after the date of approval by the agency, or such shorter period of time as may be prescribed by the Attorney General.

[(7)] *(6)*(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph [(6)] *(5)* at which a merger transaction approved under paragraph [(5)] *(4)* might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. [In any such action, the court shall review de novo the issues presented.]

[(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).]

[(C)] *(B)* Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this subsection shall exempt any bank or savings association resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

[(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.]

[(8)] *(7)* For the purposes of this subsection, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in pari materia.

[(9)] *(8)* Each of the responsible agencies shall include in its annual report to the Congress a description of each merger transaction approved by it during the period covered by the report, along with—

(A) the name and total resources of each bank or savings association involved; *and*

[(B) whether a report was submitted by the Attorney General under paragraph (4), and, if so, a summary by the Attorney General of the substance of such report; and]

[(C)] *(B)* a statement by the responsible agency of the basis for its approval.

[(10)] *(9)* Until June 30, 1976, the responsible agency shall not grant any approval required by law which has the practical effect of permitting a conversion from the mutual to the stock form of organization, including approval of any application pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the responsible agency to grant approvals in cases where the responsible agency finds that it must act in order to maintain the safety, soundness, and stability of an insured depository institution. The responsible agency may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

[(11)] *(10)* The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

(11) REQUIREMENT TO FILE INFORMATION WITH ATTORNEY GENERAL.—Any applicant seeking prior written approval of the responsible Federal banking agency to engage in a merger transaction under this subsection shall file simultaneously with the Attorney General copies of any documents regarding the proposed transaction required by the Federal banking agency.

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(g)(1) The Board of Directors shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks and for such purpose it may define the term "demand deposits"; but such exceptions from this prohibition shall be made as are now or may hereafter be prescribed with respect to deposits payable on demand in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the Board of Governors of the Federal Reserve System. The Board of Directors may from time to time, after consulting with the Board of Governors of the Federal Reserve System [and the Director of the Office of Thrift Supervision], prescribe rules governing the advertisement of interest or dividends on deposits, including limitations on the rates of interest or dividends that may be paid by insured nonmember banks (including insured mutual savings banks) on time and savings deposits. The Board of Directors is authorized for the purposes of this subsection to define the terms "time deposits" and "savings deposits", to determine what shall be deemed a payment of interest, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this subsection and to prevent evasions thereof. The provisions of this subsection and of regulations issued thereunder shall also apply, in the discretion of the Board of Directors, to obligations other than deposits that are undertaken by insured nonmember banks or their affiliates. As used in this subsection, the term "affiliate" has the same meaning as when used in section 2(b) of the Banking Act of 1933, as amended (12 U.S.C. 221a(b)), except that the term "member bank", as used in such section 2(b), shall be deemed to refer to an insured nonmember bank. For each violation of any provision of this subsection or any lawful provision of such regulations relating to the payment of interest or dividends on deposits or to withdrawal of deposits, the offending bank shall be subject to a penalty of not more than $100, which the Corporation may recover for its use. During the period commencing on October 15, 1962, and ending on October 15, 1968, the provisions of this subsection shall not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member. The authority conferred by this subsection shall also apply to noninsured banks in any State if the total amount of time and savings deposits held in all such banks in the State, plus the total amount of deposits, shares, and withdrawable accounts held in all building and loan, savings and loan, and homestead associations (including cooperative banks) in

the State which are not members of a Federal home loan bank, is more than 20 per centum of the total amount of such deposits, shares, and withdrawable accounts held in all banks, and building and loan, savings and loan, and homestead associations (including cooperative banks) in the State. Such authority shall only be exercised by the Board of Directors with respect to such noninsured banks prior to July 31, 1970, to limit the rates of interest or dividends which such banks may pay on time and savings deposits to maximum rates not lower than 5½ per centum per annum. Whenever it shall appear to the Board of Directors that any noninsured bank or any affiliate thereof is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subsection or of any regulations thereunder, the Board of Directors may, in its discretion, bring an action in the United States district court for the judicial district in which the principal office of the noninsured bank or affiliate thereof is located to enjoin such acts or practices, to enforce compliance with this subsection or any regulations thereunder, or for a combination of the foregoing, and such courts shall have jurisdiction of such actions, and, upon a proper showing, an injunction, restraining order, or other appropriate order may be granted without bond.

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(i)(1) * * *

(2) No insured Federal depository institution shall convert into an insured State depository institution if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approving such conversion, without the prior written consent of—

(A) the Comptroller of the Currency if the resulting bank is to be a District bank;

(B) the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank (except a District bank); *and*

(C) the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank)**[**; and**]**.

[(D) the Director of the Office of Thrift Supervision if the resulting institution is to be an insured State savings association.**]**

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[(m) ACTIVITIES OF SAVINGS ASSOCIATIONS AND THEIR SUBSIDIARIES.—

[(1) PROCEDURES.—When an insured savings association establishes or acquires a subsidiary or when an insured savings association elects to conduct any new activity through a subsidiary that the insured savings association controls, the insured savings association—

[(A) shall notify the Corporation and the Director of the Office of Thrift Supervision not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that

time such information as each such agency may, by regulation, require; and

[(B) shall conduct the activities of the subsidiary in accordance with regulations and orders of the Director of the Office of Thrift Supervision.

[(2) ENFORCEMENT POWERS.—With respect to any subsidiary of an insured savings association:

[(A) the Corporation and the Director of the Office of Thrift Supervision shall each have, with respect to such subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 8; and

[(B) the Director of the Office of Thrift Supervision may determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its ownership or control of, or its relationship to, the subsidiary—

[(i) constitutes a serious risk to the safety, soundness, or stability of the insured savings association, or

[(ii) is inconsistent with sound banking principles or with the purposes of this Act.

Upon making any such determination, the Corporation or the Director of the Office of Thrift Supervision shall have authority to order the insured savings association to divest itself of control of the subsidiary. The Director of the Office of Thrift Supervision may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Director may deem appropriate.

[(3) ACTIVITIES INCOMPATIBLE WITH DEPOSIT INSURANCE.—

[(A) IN GENERAL.—The Corporation may determine by regulation or order that any specific activity poses a serious threat to the Savings Association Insurance Fund. Prior to adopting any such regulation, the Corporation shall consult with the Director of the Office of Thrift Supervision and shall provide appropriate State supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into consideration. Any such regulation shall be issued in accordance with section 553 of title 5, United States Code. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no Savings Association Insurance Fund member may engage in the activity directly.

[(B) AUTHORITY OF DIRECTOR.—This section does not limit the authority of the Office of Thrift Supervision to issue regulations to promote safety and soundness or to enforce compliance with other applicable laws.

[(C) ADDITIONAL AUTHORITY OF FDIC TO PREVENT SERIOUS RISKS TO INSURANCE FUND.—Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices

of savings associations that pose a serious threat to the Savings Association Insurance Fund or the Bank Insurance Fund.

[(4) "SUBSIDIARY" DEFINED.—As used in this subsection, the term "subsidiary" does not include an insured depository institution.

[(5) APPLICABILITY TO CERTAIN SAVINGS BANKS.—Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to—

[(A) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or

[(B) a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.]

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(s) GRIEVANCE PROCESS WITH RESPECT TO SECURITIES ACTIVITIES.—

(1) PROCEDURES REQUIRED.—The appropriate Federal banking agencies shall jointly establish procedures and facilities for receiving and expeditiously processing complaints against any bank or employee of a bank arising in connection with the purchase or sale of a security by a customer. The use of any such procedures and facilities by such a customer shall be at the election of the customer.

(2) REQUIRED ACTIONS.—The actions required by the Federal banking agencies under paragraph (1) shall include the following:

(A) establishing a group, unit, or bureau within each such agency to receive such complaints;

(B) developing and establishing procedures for investigating such complaints;

(C) developing and establishing procedures for informing customers of the rights they may have in connection with such complaints; and

(D) developing and establishing procedures for resolving such complaints, including procedures for the recovery of losses to the extent appropriate.

(3) PROCEDURES IN ADDITION TO OTHER REMEDIES.—The procedures and remedies provided under this subsection shall be in addition to, and not in lieu of, any other remedies available under law.

(4) DEFINITION.—As used in this subsection, the term "security" has the meaning provided in section 3(a)(10) of the Securities Exchange Act of 1934.

(t) RECORDKEEPING REQUIREMENTS.—

(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate

Federal banking agency shall make any such information available to the Commission upon request.

(2) DEFINITIONS.—As used in this subsection the term "Commission" means the Securities and Exchange Commission.

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SEC. 22. NONDISCRIMINATION.

[It is not] *(a) IN GENERAL.—It is not* the purpose of this Act to discriminate in any manner against State nonmember banks [or State savings associations and in favor of national or member banks or Federal savings associations, respectively] *and in favor of national or member banks*. It is the purpose of this Act to provide all banks [and savings associations] with the same opportunity to obtain and enjoy the benefits of this Act.

(b) PROGRAMS FOR PROMOTING HOUSING FINANCE.—

(1) FINDINGS.—The Congress finds that it is in the national interest to protect and promote housing finance in the process of converting savings associations to banks and eliminating the separate Federal regulation of savings associations.

(2) PROGRAMS REQUIRED.—In furtherance of paragraph (1), each appropriate Federal banking agency shall—

(A) develop and implement a program designed to—

(i) facilitate the conversion of savings associations to banks and the treatment of State savings associations as State banks; and

(ii) promote housing finance by assuring that insured depository institutions may, at their own election, specialize in acquisition, development, residential mortgage finance, and residential mortgage and housing production lending; and

(B) develop guidelines and procedures for assuring that insured depository institutions are not subject to supervisory criticism or sanction for prudently concentrating in acquisition, development, residential mortgage finance, and residential mortgage and housing production lending.

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[SEC. 28. ACTIVITIES OF SAVINGS ASSOCIATIONS.

[(a) IN GENERAL.—On and after January 1, 1990, a savings association chartered under State law may not engage as principal in any type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless—

[(1) the Corporation has determined that the activity would pose no significant risk to the affected deposit insurance fund; and

[(2) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

[(b) DIFFERENCES OF MAGNITUDE BETWEEN STATE AND FEDERAL POWERS.—Notwithstanding subsection (a)(1), if an activity (other than an activity described in section 5(c)(2)(B) of the Home Owners' Loan Act) is permissible for a Federal savings association, a savings association chartered under State law may engage as principal

in that activity in an amount greater than the amount permissible for a Federal savings association if—

[(1) the Corporation has not determined that engaging in that amount of the activity poses any significant risk to the affected deposit insurance fund; and

[(2) the savings association chartered under State law is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

[(c) EQUITY INVESTMENTS BY STATE SAVINGS ASSOCIATIONS.—

[(1) IN GENERAL.—Notwithstanding subsections (a) and (b), a savings association chartered under State law may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association.

[(2) EXCEPTION FOR SERVICE CORPORATIONS.—Paragraph (1) does not prohibit a savings association from acquiring or retaining shares of one or more service corporations if—

[(A) the Corporation has determined that no significant risk to the affected deposit insurance fund is posed by—

[(i) the amount that the association proposes to acquire or retain; or

[(ii) the activities in which the service corporation engages; and

[(B) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

[(3) TRANSITION RULE.—

[(A) IN GENERAL.—The Corporation shall require any savings association to divest any equity investment the retention of which is not permissible under paragraph (1) or (2) as quickly as can be prudently done, and in any event not later than July 1, 1994.

[(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT.—With respect to any equity investment held by any savings association on May 1, 1989, the savings association shall be deemed not to be in violation of the prohibition in paragraph (1) or (2) on retaining such investment so long as the savings association complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such investments.

[(d) CORPORATE DEBT SECURITIES NOT OF INVESTMENT GRADE.—

[(1) IN GENERAL.—No savings association may, directly or through a subsidiary, acquire or retain any corporate debt security not of investment grade.

[(2) EXCEPTION FOR SECURITIES HELD BY QUALIFIED AFFILIATE.—Paragraph (1) shall not apply with respect to any corporate debt security not of investment grade which is acquired and retained by any qualified affiliate of a savings association.

[(3) TRANSITION RULE.—

[(A) IN GENERAL.—The Corporation shall require any savings association or any subsidiary of any savings association to divest any corporate debt security not of investment grade the retention of which is not permissible under

paragraph (1) as quickly as can be prudently done, and in any event not later than July 1, 1994.

[(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT.—With respect to any corporate debt security not of investment grade held by any savings association or subsidiary on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the savings association or subsidiary shall be deemed not to be in violation of the prohibition in paragraph (1) on retaining such investment so long as the association or subsidiary complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such securities.

[(4) DEFINITIONS.—For purposes of this section—

[(A) INVESTMENT GRADE.—Any corporate debt security is not of "investment grade" unless that security, when acquired by the savings association or subsidiary, was rated in one of the 4 highest rating categories by at least one nationally recognized statistical rating organization.

[(B) QUALIFIED AFFILIATE.—The term "qualified affiliate" means—

[(i) in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and

[(ii) in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital.

[(C) CERTAIN SECURITIES NOT INCLUDED.—The term "corporate debt security not of investment grade" does not include any obligation issued or guaranteed by a corporation that may be held by a Federal savings association without limitation as to percentage of assets under subparagraph (D), (E), or (F) of section 5(c)(1) of the Home Owners' Loan Act.

[(e) TRANSFER OF CORPORATE DEBT SECURITY NOT OF INVESTMENT GRADE IN EXCHANGE FOR A QUALIFIED NOTE.—

[(1) ACQUISITION OF NOTE.—Notwithstanding subsections (a), (b), and (c) of section 5 of the Home Owners' Loan Act and any other provision of Federal or State law governing extensions of credit by savings associations, any insured savings association, and any subsidiary of any insured savings association, that, on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, holds any corporate debt security not of investment grade may acquire a qualified note in exchange for the transfer of such security to—

[(A) any holding company which controls 80 percent or more of the shares of such insured savings association; or

[(B) any company other than an insured savings association, or any subsidiary of any insured savings association, 80 percent or more of the shares of which are controlled by such holding company,

if the conditions of paragraph (2) are met.

[(2) CONDITIONS FOR EXCHANGE OF SECURITY FOR QUALIFIED NOTE.—The conditions of this paragraph are met if—

[(A) the insured savings association was in compliance with applicable capital requirements on December 31, 1988, and the insured savings association after such date—

[(i) remains in compliance with applicable capital requirements; or

[(ii) adopts and complies with a capital plan acceptable to the Director of the Office of Thrift Supervision;

[(B) the company to which the corporate debt security not of investment grade is transferred is not a bank holding company, an insured savings association, or a direct or indirect subsidiary of such holding company or insured savings association;

[(C) before the end of the 90-day period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the insured savings association notifies the Director of the Office of Thrift Supervision of such association's intention to transfer the corporate debt security not of investment grade to the savings and loan holding company or the subsidiary of such holding company;

[(D) the transfer of the corporate debt security not of investment grade is completed—

[(i) before the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, in the case of an insured savings association that, as of such date, is controlled by a savings and loan holding company; or

[(ii) before the end of the 2-year period beginning on such date, in the case of a savings association that is not, as of such date, a subsidiary of a savings and loan holding company;

[(E) the insured savings association receives in exchange for the corporate debt security not of investment grade the fair market value of such security;

[(F) the Director of the Office of Thrift Supervision has—

[(i) approved the transaction; and

[(ii) determined that the transfer represents a complete and effective divestiture of the corporate debt security not of investment grade and is in compliance with the provisions of this subsection; and

[(G) any gain on the sale of the corporate debt security not of investment grade is recognized, and included for applicable regulatory capital requirements, by the insured savings association only at such time and to the extent that the insured savings association receives payment of principal on the note in cash in excess of the fair market value of the transferred corporate debt security not of investment grade as carried on the accounts of the insured savings association immediately prior to the transfer.

[(3) QUALIFIED NOTE DEFINED.—The term "qualified note" means any note that—

[(A) is at all times fully secured by the corporate debt security not of investment grade transferred in exchange for the note, or by other collateral of at least equivalent value that is acceptable to the Director of the Office of Thrift Supervision;

[(B) contains provisions acceptable to the Director of the Office of Thrift Supervision that would—

[(i) prevent any action to encumber or impair the value of the collateral referred to in subparagraph (A); and

[(ii) allow the sale of the corporate debt security not of investment grade if the proceeds of the sale are reinvested in assets of equivalent value;

[(C) is on market terms, including interest rate, which must in all cases be above the insured savings association's borrowing rate for similar term funds;

[(D) is fully repayable over a period of time not to exceed 5 years from the date of transfer;

[(E) is repaid with annual principal payments at least as large as would be necessary to repay the note within 5 years if it were on a level payment amortization schedule and the interest rate for the first year of repayment were fixed throughout the amortization period;

[(F) is fully guaranteed by each holding company of the insured savings association that acquires such note; and

[(G) is repaid in full in cash in accordance with its terms and this subsection.

[(4) FAILURE TO REPAY ON SCHEDULE.—The exemption provided by this subsection from subsections (a), (b), and (c) of section 11 of the Home Owners' Loan Act and any other applicable provision of Federal or State law shall terminate immediately if the insured savings association or any affiliate of such association fails to comply with the terms of the qualified note or this subsection.

[(f) DETERMINATIONS.—The Corporation shall make determinations under this section by regulation or order.

[(g) ACTIVITY DEFINED.—For purposes of subsections (a) and (b)—

[(1) IN GENERAL.—The term "activity" includes acquiring or retaining any investment.

[(2) DIVESTITURE OF CERTAIN ASSETS.— Notwithstanding paragraph (1), subsections (a) and (b) shall not be construed to require a savings association to divest itself of any assets acquired before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

[(h) OTHER AUTHORITY NOT AFFECTED.—This section may not be construed as limiting—

[(1) any other authority of the Corporation; or

[(2) any authority of the Director of the Office of Thrift Supervision or of a State to impose more stringent restrictions.]

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SEC. 33. DEPOSITORY INSTITUTION EMPLOYEE PROTECTION REMEDY.

(a) * * *

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(e) FEDERAL BANKING AGENCY DEFINED.—For purposes of subsections (a) and (c), the term "Federal banking agency" means the Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, *and* the Comptroller of the Currency[, and the Director of the Office of Thrift Supervision].

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SEC. 38. PROMPT CORRECTIVE ACTION.

(a) * * *

* * * * * * *

[(o) TRANSITION RULES FOR SAVINGS ASSOCIATIONS.—

[(1) RTC'S ROLE DOES NOT DIMINISH CARE REQUIRED OF OTS.—

[(A) IN GENERAL.—In implementing this section, the appropriate Federal banking agency (and, to the extent applicable, the Corporation) shall exercise the same care as if the Savings Association Insurance Fund (rather than the Resolution Trust Corporation) bore the cost of resolving the problems of insured savings associations described in clauses (i) and (ii)(II) of section 21A(b)(3)(A) of the Federal Home Loan Bank Act.

[(B) REPORTS.—Subparagraph (A) does not require reports under subsection (k).

[(2) ADDITIONAL FLEXIBILITY FOR CERTAIN SAVINGS ASSOCIATIONS.—Subsections (e)(2), (f), and (h) shall not apply before July 1, 1994, to any insured savings association if—

[(A) before the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991—

[(i) the savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act; and

[(ii) the Director of the Office of Thrift Supervision had accepted the plan;

[(B) the plan remains in effect; and

[(C) the savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.]

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SEC. 42. NOTICE OF BRANCH CLOSURE.

(a) * * *

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(d) BRANCH CLOSURES IN INTERSTATE BANKING OR BRANCHING OPERATIONS.—

(1) * * *

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(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) INTERSTATE BANK DEFINED.—The term "interstate bank" means a bank which maintains branches in more than 1 State *and any bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)*.

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REVISED STATUTES OF THE UNITED STATES

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TITLE VII.

THE DEPARTMENT OF THE TREASURY

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CHAPTER NINE.

THE COMPTROLLER OF THE CURRENCY.

* * * * * * *

SEC. 324. There shall be in the Department of the Treasury a bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of national currency secured by United States bonds and, under the general supervision of the Federal Reserve Board, of all Federal Reserve notes, except for the cancellation and destruction, and accounting with respect to such cancellation and destruction, of Federal reserve notes unfit for circulation, of notes the chief officer of which bureau shall be called the Comptroller of the Currency and shall perform his duties under the general directions of the Secretary of the Treasury. **[**The Comptroller of the Currency shall have the same authority over matters within the jurisdiction of the Comptroller as the Director of the Office of Thrift Supervision has over matters within the Director's jurisdiction under section 3(b)(3) of the Home Owners' Loan Act**]** *The Secretary of the Treasury may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions) unless otherwise specifically provided by law*. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency.

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TITLE LXII.

NATIONAL BANKS.

CHAPTER ONE.

ORGANIZATION AND POWERS.

* * * * * * *

SEC. 5133A. MUTUAL NATIONAL BANKS.

(a) IN GENERAL.—The Comptroller of the Currency may charter national banking associations as mutual national banks, either de novo or through the conversion of an insured depository institution, in accordance with this section and such regulations as the Comptroller may prescribe.

(b) APPLICABLE LAW.—Unless otherwise provided by this section or by the Comptroller of the Currency because of the mutual form of the institution, a mutual national bank—

(1) shall be subject to the same laws, requirements, duties, and obligations that apply to a national banking association operating in stock form;

(2) shall have the same powers and privileges as, and may engage in the same activities subject to the same restrictions and limitations that apply to, a national banking association operating in stock form; and

(3) shall be supervised and examined by the Comptroller in the same manner and to the same extent as a national banking association operating in stock form.

(c) CONVERSIONS.—Subject to any requirements imposed by the Comptroller—

(1) a mutual national bank may convert to, or acquire and retain all or substantially all of the assets and liabilities of, a national banking association operating in stock form; and

(2) a national banking association operating in stock form may convert to a mutual national bank.

(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(2) MUTUAL NATIONAL BANK.—The term "mutual national bank" means a national banking association that operates in mutual form and is chartered by the Comptroller under this section.

(e) CONFORMING REFERENCES.—Unless otherwise provided by the Comptroller—

(1) any reference in any Federal law to a national bank, including a reference to the term "national banking association", "member bank", "national bank", "national association", "bank",

"insured bank", "insured depository institution", or "depository institution", shall be deemed to refer also to a "mutual national bank";

(2) any reference in any Federal law to the term "shareholder", "shareholders", "stockholder", or "stockholders" of a national bank shall be deemed to refer also to any member or members of a mutual national bank;

(3) any reference in any Federal law to the term "board of directors", "director", or "directors" of a national bank shall be deemed to refer also to the board of trustees, trustee, or trustees, respectively, of a mutual national bank; and

(4) any terms in Federal law that may apply only to a national bank operating in stock form, including the terms "stock", "shares", "shares of stock", "capital stock", "common stock", "stock certificate", "stock certificates", "certificate representing shares of stock", "stock dividend", "transferable stock", "each class of stock", "cumulate such shares", "par value", "preferred stock", "body corporate", "corporation", "corporate powers", "incorporated", "articles of association", and "corporate existence", shall not apply to a mutual national bank, unless the Comptroller determines that the context requires otherwise.

SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPANIES.

(a) REORGANIZATION OF MUTUAL NATIONAL BANK AS A HOLDING COMPANY.—

(1) IN GENERAL.—Subject to approval under the Bank Holding Company Act of 1956, a mutual national bank may reorganize so as to become a Federal mutual bank holding company by submitting a reorganization plan to the Comptroller of the Currency for the Comptroller's approval.

(2) PLAN APPROVAL.—Upon the approval of the reorganization plan by the Comptroller of the Currency and the issuance of the appropriate charters—

(A) the substantial part of the mutual national bank's assets and liabilities, including all of the bank's insured liabilities, shall be transferred to a national banking association, the stock of which is owned (except as otherwise provided by this section) by the mutual national bank; and

(B) the mutual national bank shall become a Federal mutual bank holding company.

(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS' APPROVAL OF PLAN REQUIRED.—This subsection does not authorize a reorganization unless—

(1) a majority of the mutual national bank's board of directors has approved the plan providing for such reorganization; and

(2) in the case of a mutual national bank in which holders of accounts and obligors exercise voting rights, a majority of such individuals has approved the plan at a meeting held at the call of the directors under the procedures prescribed by the bank's charter and bylaws.

(c) RETENTION OF CAPITAL.—In connection with a transaction described in subsection (a), a mutual national bank may, subject to the Comptroller's approval, retain capital at the holding company level to the extent that the capital retained at the holding company

level exceeds the amount of capital required for the national banking association chartered as a part of a transaction described in subsection (a) to meet all relevant capital standards established by the Comptroller for national banking associations.

(d) OWNERSHIP.—

(1) IN GENERAL.—Persons having ownership rights in the mutual national bank under Federal or State law shall have the same ownership rights with respect to the Federal mutual bank holding company.

(2) HOLDERS OF CERTAIN ACCOUNTS.—Holders of savings, demand, or other accounts in the following institutions shall have the same ownership rights with respect to the Federal mutual bank holding company as persons described in paragraph (1):

(A) A national bank chartered as part of a transaction described in subsection (a).

(B) A mutual bank acquired through the merger of the mutual bank into a national bank subsidiary of the holding company or an interim national bank subsidiary of the holding company.

(e) REGULATION.—A Federal mutual bank holding company shall be—

(1) chartered by the Comptroller of the Currency and shall be subject to such regulations as the Comptroller shall prescribe; and

(2) regulated under the Bank Holding Company Act of 1956 on the same terms and subject to the same limitations as any other company that controls a bank.

(f) CAPITAL IMPROVEMENT.—

(1) PLEDGE OF STOCK OF NATIONAL BANK SUBSIDIARY.—This section shall not prohibit a Federal mutual bank holding company from pledging all or a portion of the stock of a national banking association chartered as part of a transaction described in subsection (a) to raise capital for such bank.

(2) ISSUANCE OF NONVOTING SHARES.—This section shall not prohibit a national banking association chartered as part of a transaction described in subsection (a) from issuing any nonvoting shares, or less than 50 percent of the voting shares of such bank, to any person other than the Federal mutual bank holding company.

(g) INSOLVENCY AND LIQUIDATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Comptroller of the Currency may file a petition under chapter 7 of title 11, United States Code, with respect to a Federal mutual bank holding company upon—

(A) the default of any national bank—

(i) the stock of which is owned by the Federal mutual bank holding company; and

(ii) that was chartered in a transaction described in subsection (a); or

(B) a foreclosure on a pledge by the Federal mutual bank holding company described in subsection (f)(1).

(2) DISTRIBUTION OF NET PROCEEDS.—Except as provided in paragraph (3), the net proceeds of any liquidation of any Federal mutual bank holding company under paragraph (1) shall

be transferred to persons who hold ownership interests in such Federal mutual bank holding company.

(3) RECOVERY BY FDIC.—If the Federal Deposit Insurance Corporation incurs a loss as a result of the default of any insured bank subsidiary of a Federal mutual bank holding company that is liquidated under paragraph (1), the Federal Deposit Insurance Corporation shall succeed to the ownership interests of the depositors of the bank in the Federal mutual bank holding company, to the extent of the Federal Deposit Insurance Corporation's loss.

(h) DEFINITIONS.—

(1) FEDERAL MUTUAL BANK HOLDING COMPANY.—The term "Federal mutual bank holding company" means a corporation chartered under this section.

(2) DEFAULT.—With respect to a national bank, the term "default" means an adjudication or other official determination by any court of competent jurisdiction, the Comptroller, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for the national bank.

* * * * * * *

SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.

(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

(1) EXCLUSIVE AUTHORITY.—No provision of section 5136 or any other provision of this title LXII of the Revised Statutes shall be construed as authorizing a subsidiary of a national bank to engage in, or own any share of any company engaged in, any activity that—

(A) is not permissible for a national bank to engage in directly; or

(B) is conducted under terms or conditions other than those that would govern the conduct of such activity by a national bank,

unless a national bank is specifically authorized by the express terms of a Federal statute and not by implication or interpretation to acquire shares of or control such subsidiary, such as by paragraph (2) of this subsection and section 25A of the Federal Reserve Act.

(2) SPECIFIC AUTHORIZATION TO CONDUCT INSURANCE AGENCY ACTIVITIES.—A national bank may control a company engaged in general insurance agency activities if—

(A) the national bank is well capitalized and well managed, and has achieved a rating of satisfactory or better at the most recent examination of the bank under the Community Reinvestment Act of 1977;

(B) all depository institution affiliates of the national bank are well capitalized and well managed, and have achieved a rating of satisfactory or better at the most recent examination of each such depository institution under the Community Reinvestment Act of 1977; and

(C) the bank has received the approval of the Comptroller of the Currency.

(3) DEFINITIONS.—

(A) COMPANY; CONTROL; SUBSIDIARY.—The terms "company", "control", and "subsidiary" have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956.

(B) WELL CAPITALIZED.—The term "well capitalized" has the same meaning as in section 38 of the Federal Deposit Insurance Act and, for purposes of this section, the Comptroller shall have exclusive jurisdiction to determine whether a national bank is well capitalized.

(C) WELL MANAGED.—The term "well managed" means—

(i) in the case of a bank that has been examined, unless otherwise determined in writing by the Comptroller—

(I) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the bank; and

(II) at least a rating of 2 for management, if that rating is given; or

(ii) in the case of any national bank that has not been examined, the existence and use of managerial resources that the Comptroller determines are satisfactory.

(b) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes affiliated with a national bank during the 24-month period preceding the submission of an application to acquire a subsidiary under subsection (a)(2), and any depository institution which becomes so affiliated after the approval of such application, may be excluded for purposes of subsection (a)(2)(B) during the 24-month period beginning on the date of such acquisition if—

(1) the depository institution has submitted an affirmative plan to the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) to take such action as may be necessary in order for such institution to achieve a "satisfactory record of meeting community credit needs", or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and

(2) the plan has been approved by the appropriate Federal banking agency.

SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.

(a) AUTHORIZATION OF THE COMPTROLLER REQUIRED.—A national bank may apply to the Comptroller on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.

(b) REGULATION.—A national wholesale financial institution may exercise, in accordance with such institution's articles of incorporation and regulations issued by the Comptroller, all the powers and privileges of a national bank formed in accordance with section 5133 of the Revised Statutes of the United States, subject to section

9B of the Federal Reserve Act and the limitations and restrictions contained therein.

(c) COMMUNITY REINVESTMENT ACT OF 1977.—A national wholesale financial institution shall be subject to the Community Reinvestment Act of 1977.

(d) EXAMINATION REPORTS.—The Comptroller of the Currency shall, to the fullest extent possible, use the report of examinations made by the Board of Governors of the Federal Reserve System of a wholesale financial institution.

SEC. [5136A.] *5136C.* (a) A national bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery;

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(b) A national bank may not permit—

(1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a), or

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a).

(c) As used in this section—

(1) The term "deal in" includes making, taking, buying, selling, redeeming, or collecting.

(2) The term "lottery" includes any arrangement whereby three or more persons (the "participants") advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the "winners") will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes—

(A) a random selection;

(B) a game, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

(3) The term "lottery ticket" includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

(d) Nothing contained in this section prohibits a national bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.

(e) The Comptroller of the Currency shall issue such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

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FEDERAL RESERVE ACT

* * * * * * *

STATE BANKS AS MEMBERS.

SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms "capital" and "capital stock" shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal reserve bank.

* * * * * * *

Whenever the directors of the Federal reserve bank shall approve the examinations made by the State authorities, such examinations and the reports thereof may be accepted in lieu of examinations made by examiners selected or approved by the Board of Governors of the Federal Reserve System: *Provided, however,* That when it deems it necessary the board may order special examinations by examiners of its own selection and shall in all cases approve the form of the report. The expenses of all examinations, other than those made by State authorities, may, in the discretion of the Board of Governors of the Federal Reserve System, be assessed against the banks examined and, when so assessed, shall be paid by the banks examined. [Copies of the reports of such examinations may in the discretion of the Board of Governors of the Federal Reserve System, be furnished to the State authorities having supervision of such banks, to officers, directors, or receivers of such banks, and to any other proper persons.] *The Board of Governors of the Federal Reserve System, at its discretion, may furnish reports of examination or other confidential supervisory information concerning State member banks or any other entities examined under any other authority of the Board to any Federal or State authorities with supervisory or regulatory authority over the examined entity, to officers, directors, or receivers of the examined entity, and to any other person that the Board determines to be proper.*

* * * * * * *

(24) ENFORCEMENT AUTHORITY OVER UNINSURED STATE MEMBER BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall

apply to an uninsured State member bank in the same manner and to the same extent such provisions apply to an insured State member bank and any reference in any such provision to "insured depository institution" shall be deemed to be a reference to "uninsured State member bank" for purposes of this paragraph.

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SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.

(a) APPLICATION FOR MEMBERSHIP AS WHOLESALE FINANCIAL INSTITUTION.—

(1) APPLICATION REQUIRED.—

(A) IN GENERAL.—Any bank may apply to the Board of Governors of the Federal Reserve System to become a wholesale financial institution and, as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

(B) TREATMENT AS MEMBER BANK.—Any application under subparagraph (A) shall be treated as an application under, and shall be subject to the provisions of, section 9.

(2) INSURANCE TERMINATION.—No bank the deposits of which are insured under the Federal Deposit Insurance Act may become a wholesale financial institution unless it has met all requirements under that Act for voluntary termination of deposit insurance.

(b) GENERAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, wholesale financial institutions shall be member banks and shall be subject to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks, except that a wholesale financial institution may terminate membership under this Act only with the prior written approval of the Board and on terms and conditions that the Board determines are appropriate to carry out the purposes of this Act.

(2) PROMPT CORRECTIVE ACTION.—A wholesale financial institution shall be deemed to be an insured depository institution for purposes of section 38 of the Federal Deposit Insurance Act except that—

(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions; and

(B) all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board.

(3) ENFORCEMENT AUTHORITY.—Subsections (j) and (k) of section 7, subsections (b) through (n), (s), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to a wholesale financial institution in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such sections to an insured deposi-

tory institution shall be deemed to include a reference to a wholesale financial institution.

(4) CERTAIN OTHER STATUTES APPLICABLE.—A wholesale financial institution shall be deemed to be a banking institution, and the Board shall be the appropriate Federal banking agency for such bank and all such bank's affiliates, for purposes of the International Lending Supervision Act.

(5) BANK MERGER ACT.—A wholesale financial institution shall be subject to sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent the wholesale financial institution would be subject to such sections if the institution were a State member insured bank.

(6) BRANCHING.—Notwithstanding any other provision of law, a wholesale financial institution may establish and operate a branch at any location on such terms and conditions as established by the Board and, in the case of a State-chartered wholesale financial institution, with the approval of the Board, and, in the case of a national bank wholesale financial institution, with the approval of the Comptroller of the Currency.

(7) ACTIVITIES OF OUT-OF-STATE BRANCHES OF WHOLESALE FINANCIAL INSTITUTIONS.—

(A) GENERAL.—A State-chartered wholesale financial institution shall be deemed a State bank and an insured State bank and a national wholesale financial institution shall be deemed a national bank for purposes of paragraphs (1), (2), and (3) of section 24(j) of the Federal Deposit Insurance Act.

(B) DEFINITIONS.—The following definitions shall apply solely for purposes of applying paragraph (1):

(i) HOME STATE.—The term "home State" means—

(I) with respect to a national wholesale financial institution, the State in which the main office of the institution is located; and

(II) with respect to a State-chartered wholesale financial institution, the State by which the institution is chartered.

(ii) HOST STATE.—The term "host State" means a State, other than the home State of the wholesale financial institution, in which the institution maintains, or seeks to establish and maintain, a branch.

(iii) OUT-OF-STATE BANK.—The term "out-of-State bank" means, with respect to any State, a wholesale financial institution whose home State is another State.

(8) DISCRIMINATION REGARDING INTEREST RATES.—Section 27 of the Federal Deposit Insurance Act (12 U.S.C. 1831d) shall apply to State-chartered wholesale financial institutions in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such section to a State-chartered insured depository institution shall be deemed to include a reference to a State-chartered wholesale financial institution.

(9) PREEMPTION OF STATE LAWS REQUIRING DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL INSTITUTIONS.—The appropriate State banking authority may grant a charter to a whole-

sale financial institution notwithstanding any State constitution or statute requiring that the institution obtain insurance of its deposits and any such State constitution or statute is hereby preempted solely for purposes of this paragraph.

(10) PARITY FOR WHOLESALE FINANCIAL INSTITUTIONS.—A State bank that is a wholesale financial institution under this section shall have all of the rights, powers, privileges, and immunities (including those derived from status as a federally chartered institution) of and as if it were a national bank, subject to such terms and conditions as established by the Board.

(11) COMMUNITY REINVESTMENT ACT OF 1977.—A State wholesale financial institution shall be subject to the Community Reinvestment Act of 1977.

(c) SPECIFIC REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

(1) LIMITATIONS ON DEPOSITS.—

(A) MINIMUM AMOUNT.—

(i) IN GENERAL.—No wholesale financial institution may receive initial deposits of $100,000 or less, other than on an incidental and occasional basis.

(ii) LIMITATION ON DEPOSITS OF LESS THAN $100,000.—No wholesale financial institution may receive initial deposits of $100,000 or less if such deposits constitute more than 5 percent of the institution's total deposits.

(B) NO DEPOSIT INSURANCE.—No deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

(C) ADVERTISING AND DISCLOSURE.—The Board shall prescribe regulations pertaining to advertising and disclosure by wholesale financial institutions to ensure that each depositor is notified that deposits at the wholesale financial institution are not federally insured or otherwise guaranteed by the United States Government.

(2) MINIMUM CAPITAL LEVELS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—

(A) to account for the status of wholesale financial institutions as institutions that accept deposits that are not insured under the Federal Deposit Insurance Act; and

(B) to provide for the safe and sound operation of the wholesale financial institution without undue risk to creditors or other persons, including Federal reserve banks, engaged in transactions with the bank.

(3) ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In addition to any requirement otherwise applicable to State member insured banks or applicable, under this section, to wholesale financial institutions, the Board may impose, by regulation or order, upon wholesale financial institutions—

(A) limitations on transactions, direct or indirect, with affiliates to prevent—

(i) the transfer of risk to the deposit insurance funds; or

(ii) an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank, including overdrafts at a Federal reserve bank;

(B) special clearing balance requirements; and

(C) any additional requirements that the Board determines to be appropriate or necessary to—

(i) promote the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;

(ii) prevent the transfer of risk to the deposit insurance funds; or

(iii) protect creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

(4) EXEMPTIONS FOR WHOLESALE FINANCIAL INSTITUTIONS.—The Board may, by regulation or order, exempt any wholesale financial institution from any provision applicable to a member bank that is not a wholesale financial institution, if the Board finds that such exemption is not inconsistent with—

(A) the promotion of the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;

(B) the protection of the deposit insurance funds; and

(C) the protection of creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

(5) LIMITATION ON TRANSACTIONS BETWEEN A WHOLESALE FINANCIAL INSTITUTION AND AN INSURED BANK.—For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial institution that is affiliated with an insured bank shall not be a bank.

(6) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the Board's authority over member banks under any other provision of law, or to create any obligation for any Federal reserve bank to make, increase, renew, or extend any advance or discount under this Act to any member bank or other depository institution.

(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

(1) IN GENERAL.—A wholesale financial institution controlled by a company that is subject to section 17(i) of the Securities Exchange Act of 1934 or section 10 of the Bank Holding Company Act of 1956 must be well capitalized and well managed.

(2) NOTICE TO COMPANY.—The Board shall promptly provide notice to a company described in paragraph (1) whenever any wholesale financial institution controlled by such company is not well capitalized or well managed.

(3) AGREEMENT TO RESTORE INSTITUTION.—Within 45 days of receipt of a notice under paragraph (2) (or such additional period not to exceed 90 days as the Board may permit), the company shall execute an agreement acceptable to the Board to restore the wholesale financial institution to compliance with all of the requirements of paragraph (1).

(4) LIMITATIONS UNTIL INSTITUTION RESTORED.—Until the wholesale financial institution is restored to compliance with

all of the requirements of paragraph (1), the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

(5) FAILURE TO RESTORE.—If the company does not execute and implement an agreement in accordance with paragraph (3), comply with any limitation imposed under paragraph (4), restore the wholesale financial institution to well capitalized status within 180 days after receipt by the company of the notice described in paragraph (2), or restore the wholesale financial institution to well managed status within such period as the Board may permit, the company shall, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, divest control of its subsidiary depository institutions.

(6) NOTICE TO COMMISSION REGARDING DIVESTITURES.—The Board shall notify the Commission if (A) a wholesale financial institution controlled by a company subject to section 17(i) of the Securities Exchange Act of 1934 is not well capitalized or well managed, or (B) such a company is required to divest control of a subsidiary wholesale financial institution under this subsection.

(7) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) WELL MANAGED.—The term "well managed" has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

(B) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(e) CONSERVATORSHIP AUTHORITY.—

(1) IN GENERAL.—The Board may appoint a conservator to take possession and control of a wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator for a national bank under section 203 of the Bank Conservation Act, and the conservator shall exercise the same powers, functions, and duties, subject to the same limitations, as are provided under such Act for conservators of national banks.

(2) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator appointed under paragraph (1) and the wholesale financial institution for which such conservator has been appointed as the Comptroller of the Currency has under the Bank Conservation Act with respect to a conservator appointed under such Act and a national bank for which the conservator has been appointed.

(f) EXCLUSIVE JURISDICTION.—Subsections (c) and (e) of section 43 of the Federal Deposit Insurance Act shall not apply to any wholesale financial institution.

* * * * * * *

SEC. 11. The Board of Governors of the Federal Reserve System shall be authorized and empowered:

(a)(1) * * *

(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such

reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under section 19 of this Act exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State nonmember banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, [(iii) the Director of the Office of Thrift Supervision in the case of any savings association which is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or which is a member as defined in section 2 of the Federal Home Loan Bank Act, and (iv)] *and (iii)* such State officer or agency as the Board may designate in the case of any other type of bank, savings and loan association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as otherwise required by law, any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirements shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class.

* * * * * * *

[(m) Upon the affirmative vote of not less than six of its members the Board of Governors of the Federal Reserve System shall have power to fix from time to time for each Federal reserve district the percentage of individual bank capital and surplus which may be represented by loans secured by stock or bond collateral made by member banks within such district, but no such loan shall be made by any such bank to any person in an amount in excess of 15 percent of the unimpaired capital and surplus of such bank: *Provided,* That with respect to loans represented by obligations secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, certificates of indebtedness of the United States, Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, such limitation of 15 percent on loans to any person shall not apply, but State member banks shall be subject to the same limitations and conditions as are applicable in the case of national banks under section 5200(c)(4) of the Revised Statutes. Any percentage so fixed by the Board of Governors of the Federal Reserve System shall be subject to change from time to time upon ten days' notice, and it shall be the duty of the Board to establish such percentages with a view to preventing the undue use of bank loans for the speculative carrying of securities. The Board of Governors of the Federal Reserve System shall have power to direct any member bank to refrain from further increase of its loans secured by stock or bond collateral for any period up to one year under penalty of suspension of all rediscount privileges at Federal reserve banks.]

(m) [Repealed].

* * * * * * *

SEC. 19. (a) * * *

(b) RESERVE REQUIREMENTS.—

(1) DEFINITIONS.—The following definitions and rules apply to this subsection, subsection (c), section 11A, the first paragraph of section 13, and the second, thirteenth, and fourteenth paragraphs of section 16:

(A) The term "depository institution" means—

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act*, or any wholesale financial institution subject to section 9B of this Act*;

* * * * * * *

(v) any member as defined in section 2 of the Federal Home Loan Bank Act; *and*

[(vi) any savings association (as defined in section 3 of the Federal Deposit Insurance Act) which is an insured depository institution (as defined in such Act) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act; and**]**

[(vii)**]** *(vi)* for the purpose of section 13 and the fourteenth paragraph of section 16, any association or entity which is wholly owned by or which consists only of institutions referred to in clauses (i) through (vi).

* * * * * * *

(F) In order to prevent evasions of the reserve requirements imposed by this subsection, after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, **[**the Director of the Office of Thrift Supervision,**]** and the National Credit Union Administration Board, the Board of Governors of the Federal Reserve System is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account or deposit may be used to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others.

* * * * * * *

(4) SUPPLEMENTAL RESERVES.—(A) * * *

(B) The Board may require the supplemental reserve authorized under subparagraph (A) only after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, **[**the Director of the Office of Thrift Supervision,**]** and the National Credit Union Administration Board. The Board shall promptly transmit to the Congress a report with respect to any exercise of its authority to require supplemental reserves under subparagraph (A) and such report shall state the basis for the determination to exercise such authority.

* * * * * * *

RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES

SEC. 23B. (a) IN GENERAL.—
(1) * * *

* * * * * * *

(4) INSURANCE SUBSIDIARY OF NATIONAL BANK.—For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be an affiliate of the national bank and not a subsidiary of the bank.

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TITLE 18, UNITED STATES CODE

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CHAPTER 47—FRAUD AND FALSE STATEMENTS

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Sec.
1001. Statements or entries generally.

* * * * * * *

1008. Misrepresentations regarding financial institution liability for obligations of affiliates.

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§ 1008. Misrepresentations regarding financial institution liability for obligations of affiliates

(a) IN GENERAL.—No institution-affiliated party of an insured depository institution or institution-affiliated party of a subsidiary or affiliate of an insured depository institution shall fraudulently represent that the institution is or will be liable for any obligation of a subsidiary or other affiliate of the institution.

(b) CRIMINAL PENALTY.—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 1 year, or both.

(c) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this section, the term "institution-affiliated party" with respect to a subsidiary or affiliate has the same meaning as in section 3 except references to an insured depository institution shall be deemed to be references to a subsidiary or affiliate of an insured depository institution.

(d) OTHER DEFINITIONS.—For purposes of this section, the terms "affiliate", "insured depository institution", and "subsidiary" have same meanings as in section 3 of the Federal Deposit Insurance Act.

* * * * * * *

SECTION 1101 OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

DEFINITIONS

SEC. 1101. For the purpose of this title, the term—

(1) * * *

* * * * * * *

(6) "holding company" means—

(A) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956); *and*

(B) any company described in section 4(f)(1) of the Bank Holding Company Act of 1956[; and].

[(C) any savings and loan holding company (as defined in the Home Owners' Loan Act);]

(7) "supervisory agency" means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—

(A) the Federal Deposit Insurance Corporation;

[(B) Director, Office of Thrift Supervision;]

[(C)] *(B)* the National Credit Union Administration;

[(D)] *(C)* the Board of Governors of the Federal Reserve System;

[(E)] *(D)* the Comptroller of the Currency;

[(F)] *(E)* the Securities and Exchange Commission;

[(G)] *(F)* the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91–508, title I and II); or

(G) the Commodity Futures Trading Commission; or

(H) any State banking or securities department or agency; and

* * * * * * *

USE OF INFORMATION

SEC. 1112. (a) * * *

* * * * * * *

(e) Notwithstanding section 1101(6) or any other provision of [this title] *law*, the exchange of financial records*, examination reports* or other information with respect to a financial institution, holding company, or a subsidiary of a depository institution or holding company, among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council [and the Securities and Exchange Commission]*, the Securities and Exchange Commission, and the Commodity Futures Trading Commission* is permitted.

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INTERNATIONAL BANKING ACT OF 1978

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NONBANKING ACTIVITIES

SEC. 8. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(3) TERMINATION OF GRANDFATHERED RIGHTS.—

(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 6(b)(1)(D) or which receives a determination under section 10(e)(1) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.

(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(e)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1997, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 5(h) of the Bank Holding Company Act of 1956.

* * * * * * *

SEC. 15. COOPERATION WITH FOREIGN SUPERVISORS.

(a) DISCLOSURE OF SUPERVISORY INFORMATION TO FOREIGN SUPERVISORS.—Notwithstanding any other provision of law, the Board, Comptroller of the Currency, **[**Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision**]** *and Federal Deposit Insurance Corporation* may disclose information obtained in the course of exercising supervisory or examination authority to any foreign bank regulatory or supervisory authority if the Board, Comptroller, Corporation, or Director determines that such disclosure is appropriate and will not prejudice the interests of the United States.

(b) REQUIREMENT OF CONFIDENTIALITY.—Before making any disclosure of any information to a foreign authority, the Board, Comptroller of the Currency, **[**Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision**]** *and Federal Deposit Insurance Corporation* shall obtain, to the extent necessary, the agreement of such foreign authority to maintain the confiden-

tiality of such information to the extent possible under applicable law.

* * * * * * *

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * * * *

DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

[(4) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.

[(5) The term "dealer" means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.]

(4) BROKER.—

(A) IN GENERAL.—The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any of the following activities under the conditions described:

(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

(I) such broker or dealer is clearly identified as the person performing the brokerage services;

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrange-

ment are in compliance with the Federal securities laws before distribution;

(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the range of investment vehicles available from the bank and the broker or dealer under the contractual or other arrangement;

(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

(VII) such services are provided by the broker or dealer on a basis in which all customers which receive any services are fully disclosed to the broker or dealer;

(VIII) the bank does not carry a securities account of the customer except in a customary custodian or trustee capacity; and

(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

(ii) TRUST ACTIVITIES.—The bank—

(I) effects transactions in a trustee capacity and is primarily compensated based on a percentage of assets under management; or

(II) is an insured bank and—

(aa) effects transactions in a fiduciary capacity in its trust department in connection with the provision of investment advice or the exercise of investment discretion;

(bb) is primarily compensated based on a percentage of assets under management, and does not receive incentive compensation for such brokerage activities;

(cc) does not publicly solicit brokerage business, other than by advertising that it effects

transactions in securities in conjunction with advertising its other trust activities; and

(dd) such services are not provided by an employee of the bank who is also an employee of a broker or dealer.

(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities, other than transactions in municipal revenue bonds that a national bank is not explicitly authorized to buy or sell for its own account by the Seventh paragraph of section 5136 of the Revised Statutes of the United States (as in effect on September 1, 1997) without percentage limitation on the amount of the investment for its own account;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(iv) EMPLOYEE AND SHAREHOLDER BENEFIT PLANS.—The bank effects transactions in—

(I) the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its subsidiaries, if the bank does not—

(aa) solicit transactions; or

(bb) receive any compensation directly or indirectly from employees for effecting such transactions, other than a flat per order processing fee that does not exceed the bank's incremental costs directly attributable to effecting such transactions; or

(II) the securities of an issuer as part of that issuer's dividend reinvestment and stock purchase plan for its shareholders, if the bank does not—

(aa) solicit transactions;

(bb) receive any compensation directly or indirectly from shareholders for effecting such transactions, other than a flat per order processing fee that does not exceed the bank's incremental costs directly attributable to effecting such transactions; or

(cc) net shareholders' buy and sell orders.

(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvest-

ment of bank deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—

(I) a registered broker or dealer; or

(II) an affiliate that is engaged in merchant banking, as described in section 17(i)(7)(B)(ii)(VIII) of this title.

(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder;

(II) at any time after one year after the date of enactment of the Financial Services Act of 1997, is not affiliated with a broker or dealer that has been registered for more than one year; and

(III) effects transactions exclusively with qualified investors.

(viii) SAFEKEEPING AND CUSTODY SERVICES.—The bank—

(I) provides safekeeping or custody services with respect to securities that are pledged by one customer to another customer in connection with a repurchase agreement or similar financing arrangement;

(II) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities; or

(III) effects or facilitates the lending or borrowing of securities with or on behalf of its customers as part of services provided to those customers pursuant to subclause (I) or (II).

(ix) BANKING PRODUCTS.—The bank effects transactions in banking products, as defined in paragraph (54) of this subsection.

(x) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (ix), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

(C) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term "broker" does not include a bank that—

(i) was, immediately prior to the enactment of the Financial Services Act of 1997, subject to section 15(e); and

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(5) DEALER.—

(A) IN GENERAL.—The term "dealer" means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.

(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term "dealer" does not include a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities, other than purchases and sales of municipal revenue bonds that a national bank is not explicitly authorized to buy or sell for its own account by the Seventh paragraph of section 5136 of the Revised Statutes of the United States (as in effect on September 1, 1997) without percentage limitation on the amount of the investment for its own account;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

(I) for the bank; or

(II) for accounts for which the bank acts as a trustee or fiduciary.

(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or otherwise, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations predominantly originated by the bank, or a syndicate of banks of which the bank is a member, or an affiliate of any such bank other than a broker or dealer.

(iv) TRANSACTIONS IN BANKING PRODUCTS.—The bank buys or sells banking products, as defined in paragraph (54) of this subsection.

(v) DERIVATIVE INSTRUMENTS.—The bank issues, buys, or sells any derivative instrument to which the bank is a party—

(I) to or from a corporation, limited liability company, or partnership that owns and invests on a discretionary basis, not less than $10,000,000 in investments, or to or from a qualified investor, except that if the instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), the transaction shall be effected with or through a registered broker or dealer; or

(II) to or from other persons, except that if the derivative instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), or is a security (other than a government security), the transaction shall be effected with or through a registered broker or dealer; or

(III) to or from any person if the instrument is neither a security nor provides for the delivery of one or more securities (other than a derivative instrument).

* * * * * * *

(12)(A) The term "exempted security" or "exempted securities" includes—

(i) government securities, as defined in paragraph (42) of this subsection;

(ii) municipal securities, as defined in paragraph (29) of this subsection;

[(iii) any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian;]

(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940;

* * * * * * *

(18) The term "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer *(including an investment bank holding company, wholesale financial institution, or institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956 that is affiliated with an investment bank holding*

company), or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) of this title (other than paragraph (6) thereof).

* * * * * * *

(21) The term "persons associated with a member" or "associated person of a member" when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member *(including an investment bank holding company, wholesale financial institution or institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956 that is affiliated with an investment bank holding company)*, or any employee of such member.

* * * * * * *

(34) The term "appropriate regulatory agency" means—

(A) * * *

* * * * * * *

(H) When used with respect to a wholesale financial institution—

(i) the Board of Governors of the Federal Reserve System, in the case of a wholesale financial institution that has a national bank charter, a State bank charter, or is operating under the Code of Law for the District of Columbia; and

(ii) the Comptroller of the Currency, in the case of a wholesale financial institution that has a national bank charter or is operating under the Code of Law for the District of Columbia.

(I) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956—

(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

(iv) the Commission in the case of all other such institutions.

* * * * * * *

(42) The term "government securities" means—

(A) * * *

* * * * * * *

(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission; **[**or**]**

(D) for purposes of sections 15C and 17A, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

(i) that is traded on one or more national securities exchanges; or

(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association**[**.**]***; or*

(E) for purposes of section 15C as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes.

* * * * * * *

(54) BANKING PRODUCT.—

(A) DEFINITION.—The term "banking product" means—

(i) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(ii) a banker's acceptance;

(iii) a letter of credit issued or loan made by a bank;

(iv) a debit account at a bank arising from a credit card or similar arrangement;

(v) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

(I) to qualified investors; or

(II) by an employee of a bank who is not also an employee of a broker or dealer to other persons that—

(aa) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

(bb) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available; or

(vi) any derivative instrument, whether or not individually negotiated, involving or relating to foreign currencies, except options on foreign currencies that trade on a national securities exchange.

(B) CLASSIFICATION LIMITED.—Classification of a particular product as a banking product pursuant to this paragraph shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement,

contract, or transaction for any purpose under the Commodity Exchange Act.

(55) DERIVATIVE INSTRUMENT.—

(A) DEFINITION.—The term "derivative instrument" means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include a banking product.

(B) CLASSIFICATION LIMITED.— Classification of a particular contract as a derivative instrument pursuant to this paragraph shall not be construed as finding or implying that such instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

(56) QUALIFIED INVESTOR.—

(A) DEFINITION.—The term "qualified investor" means—

(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

(iii) any bank (as defined in paragraph (6) of this subsection), savings and loan association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

(iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;

(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

(viii) any associated person of a broker or dealer other than a natural person; or

(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978).

(B) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a "qualified investor" as any other person, other than a natural person, taking into consideration such factors as the person's financial sophistication, net worth, and knowledge and experience in financial matters.

* * * * * * *

REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) * * *
(b)(1) * * *

* * * * * * *

(6)(A) With respect to any person who is associated, *including an investment bank holding company, a wholesale financial institution, or institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956,* who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a broker or dealer, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(i) * * *

* * * * * * *

REGISTERED SECURITIES ASSOCIATIONS

SEC. 15A. (a) * * *

* * * * * * *

(j) REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding the date of enactment of this Act, engaged in effecting such sales.

* * * * * * *

ACCOUNTS AND RECORDS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS

SEC. 17. (a) * * *

* * * * * * *

(i) INVESTMENT BANK HOLDING COMPANIES.—

(1) MANDATORY SUPERVISION OF ANY INVESTMENT BANK HOLDING COMPANY SUBSTANTIALLY ENGAGED IN THE SECURITIES

BUSINESS, HAVING AN AFFILIATE THAT IS A WHOLESALE FINANCIAL INSTITUTION.—

(A) MANDATORY SUPERVISION.—An investment bank holding company that—

(i) is substantially engaged in the securities business;

(ii) controls one or more wholesale financial institutions that, in the aggregate, have—

(I) consolidated risk-weighted assets that are less than $15,000,000,000; and

(II) annual gross revenues that represent less than 25 percent of the consolidated annual gross revenues of the company;

(iii) does not control—

(I) a bank other than a wholesale financial institution;

(II) an insured bank other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956; or

(III) a savings association;

(iv) is not a foreign bank; and

(v) has not elected to be supervised by the Board of Governors of the Federal Reserve System,

shall be regulated by the Commission as a supervised investment bank holding company in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

(B) METHOD OF CALCULATION.—

(i) RISK-WEIGHTED ASSETS.—For purposes of subparagraph (A)(ii)(I), the consolidated risk-weighted assets of a wholesale financial institution shall—

(I) be based on the average consolidated risk-weighted assets of the institution for the four previous calendar quarters; and

(II) include risk-weighted claims on affiliates only to the extent such claims, in the aggregate, exceed the aggregate risk-weighted claims of affiliates on the wholesale financial institution.

For purposes of this clause, the term "affiliates" shall not include any subsidiary of the wholesale financial institution.

(ii) INDEXED GROWTH.—The dollar amount contained in subparagraph (A)(ii)(I) shall be adjusted annually after December 31, 1998, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

(2) ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

(A) IN GENERAL.—An investment bank holding company that is not—

(i) an affiliate of a wholesale financial institution, an insured bank (other than an institution described in paragraph (1)(A)(iii)(II)), or a savings association,

(ii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978, or

(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act,

may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

(B) NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after receipt of such written notice by the Commission or within such shorter time period as the Commission, by rule or order, may determine.

(3) WITHDRAWAL FROM SUPERVISION BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY FOR COMPANIES THAT MUST CONTINUE TO BE SUPERVISED.—

(A) MANDATORY WITHDRAWAL.—A supervised investment bank holding company that owns or controls one or more wholesale financial institutions, and ceases to meet any requirements of paragraph (1), shall—

(i) file a written notice of withdrawal from Commission supervision upon such terms and conditions as the Commission, after consultation with the Board of Governors of the Federal Reserve System, deems necessary or appropriate;

(ii) provide a copy of such notice to the Board of Governors of the Federal Reserve System; and

(iii) be supervised by the Board of Governors of the Federal Reserve System under applicable provisions of the Bank Holding Company Act of 1956.

(B) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company described in paragraph (1)(A), upon such terms and conditions as the Commission deems necessary or appropriate after consultation with the Board of Governors of the Federal Reserve System, may elect not to be supervised by the Commission by filing with the Com-

mission a written notice of withdrawal from Commission supervision, and shall provide a copy of such notice to the Board of Governors of the Federal Reserve System.

(C) EFFECTIVE DATE OF WITHDRAWAL.—A written notice of withdrawal from Commission supervision pursuant to this paragraph shall become effective 45 days after receipt by the Commission or such shorter or longer period as the Commission, by order, deems necessary or appropriate to prevent evasion of the purposes of this section.

(D) REQUIRED PROCEDURES..—The Commission, after consultation with the Board of Governors of the Federal Reserve System, shall, by rule, establish standards and procedures to require or permit, as appropriate, supervised investment bank holding companies described in paragraph (1)(A) to withdraw from Commission supervision pursuant to this paragraph.

(4) ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY FOR COMPANIES THAT ARE VOLUNTARILY REGULATED.—

(A) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company that is supervised pursuant to paragraph (2) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until one year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.

(B) DISCONTINUATION OF COMMISSION SUPERVISION FOR COMPANIES THAT ARE VOLUNTARILY REGULATED.—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (2) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.

(5) SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.—

(A) RECORDKEEPING AND REPORTING.—

(i) IN GENERAL.—Every supervised investment bank holding company and each affiliate thereof shall make and keep for prescribed periods such records, furnish copies thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—

(I) the company's or affiliate's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and

transactions and relationships between any broker, dealer, or wholesale financial institution affiliate of the supervised investment bank holding company; and

(II) the extent to which the company or affiliate has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

(ii) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—

(I) a balance sheet and income statement;

(II) an assessment of the consolidated capital of the supervised investment bank holding company;

(III) an independent auditor's report attesting to the supervised investment bank holding company's compliance with its internal risk management and internal control objectives; and

(IV) reports concerning the extent to which the company or affiliate has complied with the provisions of this title and any regulations prescribed and orders issued under this title.

(B) USE OF EXISTING REPORTS.—

(i) IN GENERAL.—The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

(ii) AVAILABILITY.—A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).

(C) EXAMINATION AUTHORITY.—

(i) FOCUS OF EXAMINATION AUTHORITY.—The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—

(I) inform the Commission regarding—

(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;

(bb) the financial and operational risks within the supervised investment bank holding company that may affect any broker, dealer, or wholesale financial institution controlled by such supervised investment bank holding company; and

(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and

(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer or wholesale financial institution affiliated with the supervised investment bank holding company and any of the company's other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the "Bank Secrecy Act") and regulations thereunder.

(ii) RESTRICTED FOCUS OF EXAMINATIONS.—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—

(I) the company;

(II) any affiliate of the company (other than a wholesale financial institution) that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker, dealer, or wholesale financial institution, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer or any affiliated wholesale financial institution; and

(III) any wholesale financial institution affiliate of an investment bank holding company, for the purpose of monitoring and enforcing compliance by such a wholesale financial institution or any of its affiliates with the Federal securities laws.

(iii) NOTICE.—To the fullest extent possible, the Commission shall notify the appropriate regulatory agency prior to conducting an examination of a wholesale financial institution.

(iv) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of a wholesale financial institution or an institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.

(D) INFORMATION SHARING.—The Commission shall, upon request, provide to the appropriate regulatory agency such reports, records, or other information as the Commission has available concerning any supervised investment bank holding company described in paragraph (1) or any of its affiliates to assist the appropriate regulatory agency

in carrying out its responsibilities under the Federal banking laws.

(6) HOLDING COMPANY CAPITAL.—

(A) AUTHORITY.—If the Commission finds that it is necessary to adequately supervise investment bank holding companies and their broker, dealer, or wholesale financial institution affiliates consistent with the purposes of this subsection, the Commission may adopt capital adequacy rules for supervised investment bank holding companies.

(B) METHOD OF CALCULATION.—In developing rules under this paragraph:

(i) DOUBLE LEVERAGE.—The Commission shall consider the use by the supervised investment bank holding company of debt and other liabilities to fund capital investments in affiliates.

(ii) NO UNWEIGHTED CAPITAL RATIO.—The Commission shall not impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Commission shall not, by rule, regulation, guideline, order or otherwise, impose any capital adequacy provision on a nonbanking affiliate (other than a broker or dealer) that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority.

(iv) APPROPRIATE EXCLUSIONS.—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.

(C) INTERNAL RISK MANAGEMENT MODELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

(D) CONSULTATION WITH THE BOARD.—The Commission shall consult with the Board of Governors of the Federal Reserve System in developing capital adequacy requirements for investment bank holding companies described in paragraph (1).

(7) ACTIVITIES AND INVESTMENTS.—

(A) IN GENERAL.—Supervised investment bank holding companies described in paragraph (1) may acquire and own the shares of a wholesale financial institution in accordance with section 3 of the Bank Holding Company Act of 1956 and of any institution described in subparagraph (D), (F), and (G) of section 2(c)(2) of such Act. Such companies may also engage in activities, and may acquire or retain ownership or control of shares of any company engaged in any activities, to the extent authorized by subparagraphs (B), (C), (D), (E), and (G). Such investment bank holding companies may not otherwise engage directly or indirectly in activities or acquire and retain ownership or control of the shares of companies.

(B) PERMISSIBLE FINANCIAL ACTIVITIES AND INVESTMENTS.—

(i) IN GENERAL.—A supervised investment bank holding company described in paragraph (1) may engage in any activity, and may directly or indirectly acquire and retain ownership and control of shares of any company engaged in any activity—

(I) that is permissible for a bank holding company under section 4(c)(1) through (14) of the Bank Holding Company Act of 1956; or

(II) that are financial in nature or incidental to such financial activities, as determined under clause (ii), or that the Commission determines by rule, regulation, or order pursuant to clause (iii) to be financial in nature or incidental to such financial activities.

(ii) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:

(I) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

(II) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.

(III) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

(IV) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(V) Underwriting, dealing in, or making a market in securities.

(VI) Engaging in any activity that the Board of Governors of the Federal Reserve System has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1997, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

(VII) Engaging, in the United States, in any activity that—

(aa) a bank holding company may engage in outside the United States; and

(bb) the Board of Governors of the Federal Reserve System has determined, under regulations issued pursuant to section 4(c)(13) of Bank Holding Company Act (as in effect on the day before the date of enactment of the Financial Services Act of 1997) to be usual in

connection with the transaction of banking or other financial operations abroad.

(VIII) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the investment bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

(aa) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

(bb) such shares, assets, or ownership interests are acquired and held by a securities affiliate or an affiliate thereof as part of a bona fide underwriting or merchant banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

(cc) such shares, assets, or ownership interests, are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in division (bb); and

(dd) during the period such shares, assets, or ownership interests are held, the investment bank holding company does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of division (bb).

(IX) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the investment bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

(aa) the shares, assets, or ownership interests are not acquired or held by a depository

institution or a subsidiary of a depository institution;

(bb) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance);

(cc) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

(dd) during the period such shares, assets, or ownership interests are held, the investment bank holding company does not directly or indirectly participate in the day-to-day management or operation of the company or entity except insofar as necessary to achieve the objectives of divisions (bb) and (cc).

(iii) ACTIONS REQUIRED.—The Commission shall, by regulation or order, define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(B) Providing any device or other instrumentality for transferring money or other financial assets;

(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(iv) CONSISTENCY OF INTERPRETATION.—The Commission shall consult with the Board of Governors of the Federal Reserve System concerning the exercise of its authority and responsibility under this subparagraph with respect to investment bank holding companies to assure, to the fullest extent possible, the consistency of interpretation and the maintenance of competitive equality.

(C) PERMISSIBLE NONFINANCIAL ACTIVITIES AND INVESTMENTS.—

(i) IN GENERAL.—A supervised investment bank holding company described in paragraph (1) may engage in any activity not permitted under subparagraph (B) (hereinafter in this subparagraph and subparagraph (D) referred to as "nonfinancial activities"), and acquire and retain ownership and control of shares of any company engaged in any such nonfinancial activity, if—

(I) the aggregate annual gross revenues derived from all such activities and of all such companies does not exceed 5 percent of the consolidated an-

nual gross revenues of the supervised investment bank holding company;

(II) the consolidated total assets of any company the shares of which are acquired by such investment bank holding company pursuant to this subparagraph are less than $750,000,000 at the time such shares are acquired; and

(III) such company provides notice to the Commission within 30 days of commencing the activity or acquiring the ownership or control.

(ii) INCLUSION OF GRANDFATHERED ACTIVITIES.—For purposes of determining compliance with the limits contained in clause (i) of this subparagraph, the gross revenues derived from all activities conducted, and companies the shares of which are held, under subparagraph (D) shall be considered to be derived or held under this subparagraph.

(D) GRANDFATHERED ACTIVITIES.—

(i) IN GENERAL.—Notwithstanding subparagraph (C)(i), a company that becomes a supervised investment bank holding company described in paragraph (1) may continue to engage, directly or indirectly, in any nonfinancial activity and may retain ownership and control of shares of a company engaged in any nonfinancial activity, if—

(I) on the date of enactment of the Financial Services Act of 1997, such investment bank holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and

(II) the company engaged in such nonfinancial activity continues to engage only in the same activities that such company conducted on the date of enactment of the Financial Services Act of 1997, and other activities permissible under this subsection.

(ii) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—An investment bank holding company described in paragraph (1) that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of such investment bank holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Commission has not determined to be financial in nature or incidental to activities that are financial in nature under subparagraph (B).

(iii) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) or (g) of section 6 of the Bank Holding Company Act of 1956 may engage in

any activity or own any shares pursuant to this subparagraph or subparagraph (C).

(E) COMMODITIES.—

(i) IN GENERAL.—An investment bank holding company which was predominately engaged as of January 1, 1997, in securities activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1997, if such investment bank holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1997, in the United States.

(ii) LIMITATION.—Notwithstanding subparagraph (C)(i)(I), the attributed aggregate investment by an investment bank holding company in activities permitted under this subparagraph and not otherwise permitted for all investment bank holding companies under this subsection may not exceed 5 percent of the capital of the investment bank holding company, except that the Commission may increase such percentage of capital by such amounts and under such circumstances as the Commission considers appropriate, consistent with the purposes of this Act.

(iii) ATTRIBUTED INVESTMENT AMOUNT.—For purposes of clause (ii), the amount of the investment by an investment bank holding company which are attributable to activities described in such clause shall be determined pursuant to regulations issued by the Commission which attribute capital on the basis of such activities in relation to all activities of the company.

(F) CROSS MARKETING RESTRICTIONS.—A supervised investment bank holding company described in paragraph (1) shall not permit—

(i) any company whose shares it owns or controls pursuant to subparagraph (C), (D), or (E) to offer or market any product or service of an affiliated wholesale financial institution; or

(ii) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such investment bank holding company pursuant to such subparagraphs.

(G) DEVELOPING ACTIVITIES.—An investment bank holding company described in paragraph (1) may engage, or directly or indirectly acquire shares of any company engaged, in any activity that the Commission has not determined to be financial in nature or incidental to financial activities under subparagraph (B) if—

(i) the holding company reasonably concludes that the activity is financial in nature or incidental to financial activities;

(ii) the gross revenues from all activities conducted under this subparagraph represent less than 5 percent of the consolidated gross revenues of the holding company;

(iii) the aggregate total assets of all companies the shares of which are held under this subparagraph do not exceed 5 percent of the holding company's consolidated total assets;

(iv) the total capital invested in activities conducted under this subparagraph represents less than 5 percent of the consolidated total capital of the holding company;

(v) the Commission has not previously determined that the activity is not financial in nature or incidental to financial activities under subparagraph (B); and

(vi) the holding company provides written notification to the Commission describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.

(8) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—

(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, wholesale financial institutions, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2) of the Bank Holding Company Act of 1956; and

(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

(9) REFERENCE TO BOARD BACKUP EXAMINATION AND ENFORCEMENT AUTHORITY.—The Board of Governors of the Federal Reserve System has backup authority, pursuant to section 10(e) of the Bank Holding Company Act of 1956, with respect to supervised investment bank holding companies described in paragraph (1).

(10) DEFINITIONS.—For purposes of this subsection and subsection (j)—

(A) The term "investment bank holding company" means—

(i) any person other than a natural person that owns or controls one or more brokers or dealers; and

(ii) the associated persons of the investment bank holding company.

(B) The term "supervised investment bank holding company" means any investment bank holding company that is

supervised by the Commission pursuant to paragraph (1) or (2) of this section.

(C) Any investment bank holding company is "substantially engaged in the securities business" if—

(i) the annual total consolidated net revenues derived by the holding company from effecting transactions in or buying and selling securities as a broker or dealer represent at least 35 percent of the annual total consolidated net revenues of the company; or

(ii) the company controls one or more brokers or dealers that in the aggregate have total equity capital and qualifying subordinated debt (based on an average of the four preceding calendar quarters) in excess of $750,000,000 and such total equity capital and qualifying subordinated debt does not fall below $500,000,000 (based on an average for the four preceding calendar quarters).

(D) The term "wholesale financial institution" means a wholesale financial institution subject to section 9B of the Federal Reserve Act.

(E) The terms "affiliate," "bank," "bank holding company," "company," "control," "savings association," "well capitalized," and "well managed" have the meanings given to those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(F) The term "insured bank" has the meaning given to that term in section 3 of the Federal Deposit Insurance Act.

(G) The term "foreign bank" has the meaning given to that term in section 1(b)(7) of the International Banking Act of 1978.

(H) The terms "person associated with an investment bank holding company" and "associated person of an investment bank holding company" means any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.

(j) COMMISSION BACKUP AUTHORITY.—

(1) INSPECTION AUTHORITY FOR INVESTMENT BANK HOLDING COMPANIES THAT ARE NOT SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—

(A) AUTHORITY.—The Commission may make inspections of any investment bank holding company that—

(i) controls a wholesale financial institution,

(ii) is not a foreign bank, and

(iii) does not control an insured bank (other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956) or a savings association,

and any affiliate of such company, for the purpose of monitoring and enforcing compliance by the investment bank holding company with the Federal securities laws.

(B) LIMITATION.—The Commission shall limit the focus and scope of any inspection under subparagraph (A) to those transactions, policies, procedures, or records that are reasonably necessary to monitor and enforce compliance by

the investment bank holding company or any affiliate with the Federal securities laws.

(C) DEFERENCE TO EXAMINATIONS.—To the fullest extent possible, the Commission shall use, for the purposes of this subsection, the reports of examinations—

(i) made by the Board of Governors of the Federal Reserve System of any investment bank holding company that is supervised by the Board;

(ii) made by or on behalf of any State regulatory agency responsible for the supervision of an insurance company of any licensed insurance company; and

(iii) made by any Federal or State banking agency of any bank or institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956.

(D) NOTICE.—To the fullest extent possible, the Commission shall notify the appropriate regulatory agency prior to conducting an inspection of a wholesale financial institution or institution described in subparagraph (D), (F), or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956.

(k) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h), (i), or (j), or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of paragraph (5) of subsection (i), and subsection (j) as confidential information for purposes of section 24(b)(2) of this title.

[(i)] *(l)* COORDINATION OF EXAMINING AUTHORITIES.—

(1) ELIMINATION OF DUPLICATION.—The Commission and the examining authorities, through cooperation and coordination of examination and oversight activities, shall eliminate any unnecessary and burdensome duplication in the examination process.

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INVESTMENT COMPANY ACT OF 1940

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TITLE I—INVESTMENT COMPANIES

* * * * * * *

GENERAL DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

(5) "Bank" means [(A) a banking institution organized under the laws of the United States] *(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)*, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clause (A), (B), or (C) of this paragraph.

[(6) "Broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.]

(6) The term "broker" has the same meaning as in the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

* * * * * * *

[(11) "Dealer" means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.]

(11) The term "dealer" has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.

* * * * * * *

(19) "Interested person" of another person means—

(A) when used with respect to an investment company—

(i) * * *

* * * * * * *

[(v) any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and]

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) the investment company,

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

(III) any account over which the investment company's investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) the investment company,

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

(III) any account for which the investment company's investment adviser has borrowing authority,

[(vi)] *(vii)* any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

(i) * * *

* * * * * * *

[(v) any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and]

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) any investment company for which the investment adviser or principal underwriter serves as such,

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such, or

(III) any account over which the investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) any investment company for which the investment adviser or principal underwriter serves as such,

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such, or

(III) any account for which the investment adviser has borrowing authority,

[(vi)] *(vii)* any natural person whom the Commission by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two completed fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter.

For the purposes of this paragraph (19), "member of the immediate family" means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vi) of subparagaph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts.

No order issued pursuant to clause (vi) of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this title or for any other purpose for any period prior to the effective date of such order.

* * * * * * *

DEFINITION OF INVESTMENT COMPANY

SEC. 3. (a) * * *

* * * * * * *

(c) Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this title:

(1) * * *

* * * * * * *

(3) Any bank or insurance company; any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor; or any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian*, if—*

(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

(i) advertised; or

(ii) offered for sale to the general public; and

(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law.

* * * * * * *

AFFILIATIONS OF DIRECTORS

SEC. 10. (a) * * *

* * * * * * *

(c) No registered investment company shall have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one **[**bank, except**]** *bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), except* that, if on March 15, 1940, any registered investment company had a majority of its directors consisting of persons who are directors, officers, or employees of any one bank, such company may continue

to have the same percentage of its board of directors consisting of persons who are directors, officers, or employees of such bank.

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INVESTMENT ADVISORY AND UNDERWRITING CONTRACTS

SEC. 15. (a) * * *

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(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

(1) IN GENERAL.—If an investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—

(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

(B) if it holds the shares in a trustee or fiduciary capacity with respect to any person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—

(i) transfer the power to vote the shares of the investment company through to—

(I) the beneficial owners of the shares;

(II) another person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or

(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

(ii) vote the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or

(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.

(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affiliated person of that investment adviser, that holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets held in such capacities.

(3) SAFE HARBOR.—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by

reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).

* * * * * * *

TRANSACTIONS OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

SEC. 17. (a) It shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in section 12(d)(3) (A) and (B)), or any affiliated person of such a person, promoter, or principal underwriter, acting as principal—

(1) * * *

(2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or other property (except securities of which the seller is the issuer); **[**or**]**

(3) to borrow money or other property from such registered company or from any company controlled by such registered company (unless the borrower is controlled by the lender) except as permitted in section 21(b)**[**.**]***; or*

(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.

* * * * * * *

[(f) Every registered**]** *(f) CUSTODY OF SECURITIES.—*

(1) Every registered management company shall place and maintain its securities and similar investments in the custody of **[**(1)**]** *(A)* a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts; or **[**(2)**]** *(B)* a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934, subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors; or **[**(3)**]** *(C)* such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors.

(2) Subject to such rules, regulations, and orders as the Commission may adopt as necessary or appropriate for the protection of investors, a registered management company or any such custodian, with the consent of the registered management company for which it acts as custodian, may deposit all or any part of the securities owned by such registered management company in a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934, or such other person as may be permitted by the Commission, pursuant to which system all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities.

(3) Rules, regulations, and orders of the Commission under this subsection, among other things, may make appropriate provision with respect to such matters as the earmarking, segregation, and hypothecation of such securities and investments, and may provide for or require periodic or other inspections by any or all of the following: Independent public accountants, employees and agents of the Commission, and such other persons as the Commission may designate.

(4) No such member which trades in securities for its own account may act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors.

(5) If a registered company maintains its securities and similar investments in the custody of a qualified bank or banks, the cash proceeds from the sale of such securities and similar investments and other cash assets of the company shall likewise be kept in the custody of such a bank or banks, or in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, except that such a registered company may maintain a checking account in a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts with the balance of such account or the aggregate balances of such accounts at no time in excess of the amount of the fidelity bond, maintained pursuant to section 17(g) of this title, covering the officers or employees authorized to draw on such account or accounts.

(6) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.

* * * * * * *

UNIT INVESTMENT TRUSTS

SEC. 26. (a) * * *

(b) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).

[(b)**]** *(c)* It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

[(c)**]** *(d)* In the event that a trust indenture, agreement of custodianship, or other instrument pursuant to which securities of a reg-

istered unit investment trust are issued does not comply with the requirements of subsection (a) of this section, such instrument will be deemed to meet such requirements if a written contract or agreement binding on the parties and embodying such requirements has been executed by the depositor on the one part and the trustee or custodian on the other part, and three copies of such contract or agreement have been filed with the Commission.

[(d)] *(e)* Whenever the Commission has reason to believe that a unit investment trust is inactive and that its liquidation is in the interest of the security holders of such trust, the Commission may file a complaint seeking the liquidation of such trust in the district court of the United States in any district wherein any trustee of such trust resides or has its principal place of business. A copy of such complaint shall be served on every trustee of such trust, and notice of the proceeding shall be given such other interested persons in such manner and at such times as the court may direct. If the court determines that such liquidation is in the interest of the security holders of such trust, the court shall order such liquidation and, after payment of necessary expenses, the distribution of the proceeds to the security holders of the trust in such manner and on such terms as may to the court appear equitable.

[(e)] *(f)* EXEMPTION.—

(1) * * *

* * * * * * *

UNLAWFUL REPRESENTATIONS AND NAMES

SEC. 35. [(a) It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company has been guaranteed, sponsored, recommended, or approved by the United States or any agency or officer thereof.]

(a) MISREPRESENTATION OF GUARANTEES.—

(1) IN GENERAL.—It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

(B) has been insured by the Federal Deposit Insurance Corporation; or

(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

(3) DEFINITIONS.—The terms "insured depository institution" and "appropriate Federal banking agency" have the meaning given to such terms in section 3 of the Federal Deposit Insurance Act.

* * * * * * *

BREACH OF FIDUCIARY DUTY

SEC. 36. (a) The Commission is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United States, alleging that a person serving or acting in one or more of the following capacities has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any registered investment company for which such person so serves or acts—

(1) as officer, director, member of any advisory board, investment adviser, or depositor; **[**or**]**

(2) as principal underwriter, if such registered company is an open-end company, unit investment trust, or face-amount certificate company**[**.**]***; or*

(3) as custodian.

If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 1(b) of this title.

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INVESTMENT ADVISERS ACT OF 1940

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TITLE II—INVESTMENT ADVISERS

* * * * * * *

DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

(1) * * *

* * * * * * *

[(3) "Broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.**]**

(3) The term "broker" has the same meaning as in the Securities Exchange Act of 1934.

* * * * * * *

[(7) "Dealer" means any person regularly engaged in the business of buying and selling securities for his own account,

through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.]

(7) The term "dealer" has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.

* * * * * * *

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an [investment company] *investment company, except that the term "investment adviser" includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser*; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act; or (F) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.

* * * * * * *

(26) The term "separately identifiable department or division" of a bank means a unit—

(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.

* * * * * * *

(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

* * * * * * *

SEC. 210A. CONSULTATION.

(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access with respect to the investment advisory activities—

(A) of any—

(i) bank holding company,

(ii) bank, or

(iii) separately identifiable department or division of a bank,

that is registered under section 203 of this title; and

(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, of such bank or bank holding company.

(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, any of which is registered under section 203 of this title.

(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.

(c) DEFINITION.—For purposes of this section, the term "appropriate Federal banking agency" shall have the same meaning as in section 3 of the Federal Deposit Insurance Act.

* * * * * * *

SECTION 3 OF THE SECURITIES ACT OF 1933

EXEMPTED SECURITIES

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; [or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian] *or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940*; or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of such Code, or (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, other than any plan described in clause (A), (B), or (C) of this paragraph (i) the contributions under which are held in a single trust fund or in a

separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code, or (iii) which is a plan funded by an annuity contract described in section 403(b) of such Code. The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940;

* * * * * * *

ACT OF MAY 1, 1886

CHAP. 73.—AN ACT to enable national banking associations to increase their capital stock and to change their names or locations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

SEC. 2. (a) * * *

* * * * * * *

(d) RETENTION OF "FEDERAL" IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—

(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Act of 1997 may retain the term "Federal" in the name of such institution so long as such depository institution remains an insured depository institution.

(2) DEFINITIONS.—For purposes of this subsection, the terms "depository institution", "insured depository institution", "na-

tional bank", and "State bank" have the same meanings given to such terms in section 3 of the Federal Deposit Insurance Act.

* * * * * * *

HOME OWNERS' LOAN ACT

AN ACT To provide emergency relief with respect to home mortgage indebtedness, to refinance home mortgages, to extend relief to the owners of homes occupied by them and who are unable to amortize their debt elsewhere, to amend the Federal Home Loan Bank Act, to increase the market for obligations of the United States and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

[This Act may be cited as the "Home Owners' Loan Act".

[TABLE OF CONTENTS

[SEC. 2. DEFINITIONS.

[For purposes of this Act—

[(1) DIRECTOR.—The term "Director" means the Director of the Office of Thrift Supervision.

[(2) CORPORATION.—The term "Corporation" means the Federal Deposit Insurance Corporation.

[(3) OFFICE.—The term "Office" means the Office of Thrift Supervision.

[(4) SAVINGS ASSOCIATION.—The term "savings association" means a savings association, as defined in section 3 of the Federal Deposit Insurance Act, the deposits of which are insured by the Corporation.

[(5) FEDERAL SAVINGS ASSOCIATION.—The term "Federal savings association" means a Federal savings association or a Federal savings bank chartered under section 5 of this Act.

[(6) NATIONAL BANK.—The term "national bank" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

[(7) FEDERAL BANKING AGENCIES.—The term "Federal banking agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

[(8) STATE.—The term "State" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

[(9) AFFILIATE.—The term "affiliate" means any person that controls, is controlled by, or is under common control with, a savings association, except as provided in section 10.

[SEC. 3. DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

[(a) ESTABLISHMENT OF OFFICE.—There is established the Office of Thrift Supervision, which shall be an office in the Department of the Treasury.

[(b) ESTABLISHMENT OF POSITION OF DIRECTOR.—

[(1) IN GENERAL.—There is established the position of the Director of the Office of Thrift Supervision, who shall be the head of the Office of Thrift Supervision and shall be subject to the general oversight of the Secretary of the Treasury.

[(2) AUTHORITY TO PRESCRIBE REGULATIONS.—The Director may prescribe such regulations and issue such orders as the Director may determine to be necessary for carrying out this Act and all other laws within the Director's jurisdiction.

[(3) AUTONOMY OF DIRECTOR.—The Secretary of the Treasury may not intervene in any matter or proceeding before the Director (including agency enforcement actions) unless otherwise specifically provided by law.

[(4) BANKING AGENCY RULEMAKING.—The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Director.

[(c) APPOINTMENT; TERM.—

[(1) APPOINTMENT.—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

[(2) TERM.—The Director shall be appointed for a term of 5 years.

[(3) VACANCY.—A vacancy in the position of Director which occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established in paragraph (1) and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term.

[(4) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which appointed until a successor Director has been appointed.

[(5) TRANSITIONAL PROVISION.—Notwithstanding paragraphs (1) and (2), the Chairman of the Federal Home Loan Bank Board on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall be the Director until the date on which that individual's term as Chairman of the Federal Home Loan Bank Board would have expired.

[(d) PROHIBITION ON FINANCIAL INTERESTS.—The Director shall not have a direct or indirect financial interest in any insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act.

[(e) POWERS OF THE DIRECTOR.—The Director shall have all powers which—

[(1) were vested in the Federal Home Loan Bank Board (in the Board's capacity as such) or the Chairman of such Board on the day before the date of the enactment of the Financial

Institutions Reform, Recovery, and Enforcement Act of 1989; and

[(2) were not—

[(A) transferred to the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, the Resolution Trust Corporation, or the Federal Home Loan Mortgage Corporation pursuant to any amendment made by such Act; or

[(B) established under any provision of law repealed by such Act.

[(f) STATE HOMESTEAD PROVISIONS.—No provision of this Act or any other provision of law administered by the Director shall be construed as superseding any homestead provision of any State constitution, including any implementing State statute, in effect on the date of enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, or any subsequent amendment to such a State constitutional or statutory provision in effect on such date, that exempts the homestead of any person from foreclosure, or forced sale, for the payment of all debts, other than a purchase money obligation relating to the homestead, taxes due on the homestead, or an obligation arising from work and material used in constructing improvements on the homestead.

[(g) ANNUAL REPORT REQUIRED.—The Director shall make an annual report to the Congress. Such report shall include—

[(1) a description of any changes the Director has made or is considering making in the district offices of the Office, including a description of the geographic allocation of the Office's resources and personnel used to carry out examination and supervision functions; and

[(2) a description of actions taken to carry out section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

[(h) STAFF.—

[(1) APPOINTMENT AND COMPENSATION.—The Director shall fix the compensation and number of, and appoint and direct, all employees of the Office of Thrift Supervision notwithstanding section 301(f)(1) of title 31, United States Code. Such compensation shall be paid without regard to the provisions of other laws applicable to officers or employees of the United States.

[(2) RATES OF BASIC PAY.—Rates of basic pay for employees of the Office may be set and adjusted by the Director without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

[(3) ADDITIONAL COMPENSATION AND BENEFITS.—The Director may provide additional compensation and benefits to employees of the Office if the same type of compensation or benefits are then being provided by any Federal banking agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Office, the Director shall consult, and seek to maintain comparability with, the Federal banking agencies.

[(4) DELEGATION AUTHORITY.—

[(A) IN GENERAL.—The Director may—

[(i) designate who shall act as Director in the Director's absence; and

[(ii) delegate to any employee, representative, or agent any power of the Director.

[(B) LIMITATIONS.—Notwithstanding subparagraph (A)(ii), the Director shall not, directly or indirectly—

[(i) after October 10, 1989, delegate to any Federal home loan bank or to any officer, director, or employee of a Federal home loan bank, any power involving examining, supervising, taking enforcement action with respect to, or otherwise regulating any savings association, savings and loan holding company, or other person subject to regulation by the Director; or

[(ii) delegate the Director's authority to serve as a member of the Corporation's Board of Directors.

[(i) FUNDING THROUGH ASSESSMENTS.—The compensation of the Director and other employees of the Office and all other expenses thereof may be paid from assessments levied under this Act.

[(j) GAO AUDIT.—The Director shall make available to the Comptroller General of the United States all books and records necessary to audit all of the activities of the Office of Thrift Supervision.

[SEC. 4. SUPERVISION OF SAVINGS ASSOCIATIONS.

[(a) FEDERAL SAVINGS ASSOCIATIONS.—

[(1) IN GENERAL.—The Director shall provide for the examination, safe and sound operation, and regulation of savings associations.

[(2) REGULATIONS.—The Director may issue such regulations as the Director determines to be appropriate to carry out the responsibilities of the Director or the Office.

[(3) SAFE AND SOUND HOUSING CREDIT TO BE ENCOURAGED.—The Director shall exercise all powers granted to the Director under this Act so as to encourage savings associations to provide credit for housing safely and soundly.

[(b) ACCOUNTING AND DISCLOSURE.—

[(1) IN GENERAL.—The Director shall, by regulation, prescribe uniform accounting and disclosure standards for savings associations, to be used in determining savings associations' compliance with all applicable regulations.

[(2) SPECIFIC REQUIREMENTS FOR ACCOUNTING STANDARDS.—Subject to section 5(t), the uniform accounting standards prescribed under paragraph (1) shall—

[(A) incorporate generally accepted accounting principles to the same degree that such principles are used to determine compliance with regulations prescribed by the Federal banking agencies;

[(B) allow for no deviation from full compliance with such standards as are in effect after December 31, 1993; and

[(C) prior to January 1, 1994, require full compliance by savings associations with accounting standards in effect at any time before such date not later than provided under

the schedule in section 563.23–3 of title 12, Code of Federal Regulations (as in effect on May 1, 1989).

[(3) AUTHORITY TO PRESCRIBE MORE STRINGENT ACCOUNTING STANDARDS.—The Director may at any time prescribe accounting standards more stringent than required under paragraph (2) if the Director determines that the more stringent standards are necessary to ensure the safe and sound operation of savings associations.

[(c) STRINGENCY OF STANDARDS.—All regulations and policies of the Director governing the safe and sound operation of savings associations, including regulations and policies governing asset classification and appraisals, shall be no less stringent than those established by the Comptroller of the Currency for national banks.

[(d) INVESTMENT OF CERTAIN FUNDS IN ACCOUNTS OF SAVINGS ASSOCIATIONS.—The savings accounts and share accounts of savings associations insured by the Corporation shall be lawful investments and may be accepted as security for all public funds of the United States, fiduciary and trust funds under the authority or control of the United States or any officer thereof, and for the funds of all corporations organized under the laws of the United States (subject to any regulatory authority otherwise applicable), regardless of any limitation of law upon the investment of any such funds or upon the acceptance of security for the investment or deposit of any of such funds.

[(e) PARTICIPATION BY SAVINGS ASSOCIATIONS IN LOTTERIES AND RELATED ACTIVITIES.—

[(1) PARTICIPATION PROHIBITED.—No savings association may—

[(A) deal in lottery tickets;

[(B) deal in bets used as a means or substitute for participation in a lottery;

[(C) announce, advertise, or publicize the existence of any lottery; or

[(D) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

[(2) USE OF FACILITIES PROHIBITED.—No savings association may permit—

[(A) the use of any part of any of its own offices by any person for any purpose forbidden to the institution under paragraph (1); or

[(B) direct access by the public from any of its own offices to any premises used by any person for any purpose forbidden to the institution under paragraph (1).

[(3) DEFINITIONS.—For purposes of this subsection—

[(A) DEAL IN.—The term "deal in" includes making, taking, buying, selling, redeeming, or collecting.

[(B) LOTTERY.—The term "lottery" includes any arrangement under which—

[(i) 3 or more persons (hereafter in this subparagraph referred to as the "participants") advance money or credit to another in exchange for the possibility or expectation that 1 or more but not all of the participants (hereafter in this paragraph referred to as the "winners") will receive by reason of those participants'

advances more than the amounts those participants have advanced; and

[(ii) the identity of the winners is determined by any means which includes—

[(I) a random selection;

[(II) a game, race, or contest; or

[(III) any record or tabulation of the result of 1 or more events in which any participant has no interest except for the bearing that event has on the possibility that the participant may become a winner.

[(C) LOTTERY TICKET.—The term "lottery ticket" includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

[(4) EXCEPTION FOR STATE LOTTERIES.—Paragraphs (1) and (2) shall not apply with respect to any savings association accepting funds from, or performing any lawful services for, any State operating a lottery, or any officer or employee of such a State who is charged with administering the lottery.

[(5) REGULATIONS.—The Director shall prescribe such regulations as may be necessary to provide for enforcement of this subsection and to prevent any evasion of any provision of this subsection.

[(f) FEDERALLY RELATED MORTGAGE LOAN DISCLOSURES.—A savings association may not make a federally related mortgage loan to an agent, trustee, nominee, or other person acting in a fiduciary capacity without requiring that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the savings association. At the request of the Director, the savings association shall report to the Director the identity of such person and the nature and amount of the loan.

[(g) PREEMPTION OF STATE USURY LAWS.—(1) Notwithstanding any State law, a savings association may charge interest on any extension of credit at a rate of not more than 1 percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district in which such savings association is located or at the rate allowed by the laws of the State in which such savings association is located, whichever is greater.

[(2) If the rate prescribed in paragraph (1) exceeds the rate such savings association would be permitted to charge in the absence of this subsection, the receiving or charging a greater rate of interest than that prescribed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the extension of credit carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than 2 years after the date of such payment, an amount equal to twice the amount of the interest paid from the savings association taking or receiving such interest.

[(h) FORM AND MATURITY OF SECURITIES.—No savings association shall—

[(1) issue securities which guarantee a definite maturity except with the specific approval of the Director, or

[(2) issue any securities the form of which has not been approved by the Director.

[SEC. 5. FEDERAL SAVINGS ASSOCIATIONS.

[(a) IN GENERAL.—In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Director is authorized, under such regulations as the Director may prescribe—

[(1) to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings associations (including Federal savings banks), and

[(2) to issue charters therefor,

giving primary consideration of the best practices of thrift institutions in the United States. The lending and investment powers conferred by this section are intended to encourage such institutions to provide credit for housing safely and soundly.

[(b) DEPOSITS AND RELATED POWERS.—

[(1) DEPOSIT ACCOUNTS.—

[(A) Subject to the terms of its charter and regulations of the Director, a Federal savings association may—

[(i) raise funds through such deposit, share, or other accounts, including demand deposit accounts (hereafter in this section referred to as "accounts"); and

[(ii) issue passbooks, certificates, or other evidence of accounts.

[(B) A Federal savings association may not—

[(i) pay interest on a demand account; or

[(ii) permit any overdraft (including an intraday overdraft) on behalf of an affiliate, or incur any such overdraft in such savings association's account at a Federal reserve bank or Federal home loan bank on behalf of an affiliate.

All savings accounts and demand accounts shall have the same priority upon liquidation. Holders of accounts and obligors of a Federal savings association shall, to such extent as may be provided by its charter or by regulations of the Director, be members of the savings association, and shall have such voting rights and such other rights as are thereby provided.

[(C) A Federal savings association may require not less than 14 days notice prior to payment of savings accounts if the charter of the savings association or the regulations of the Director so provide.

[(D) If a Federal savings association does not pay all withdrawals in full (subject to the right of the association, where applicable, to require notice), the payment of withdrawals from accounts shall be subject to such rules and procedures as may be prescribed by the savings association's charter or by regulation of the Director. Except as authorized in writing by the Director, any Federal savings association that fails to make full payment of any with-

drawal when due shall be deemed to be in an unsafe or unsound condition.

[(E) Accounts may be subject to check or to withdrawal or transfer on negotiable or transferable or other order or authorization to the Federal savings association, as the Director may by regulation provide.

[(F) A Federal savings association may establish remote service units for the purpose of crediting savings or demand accounts, debiting such accounts, crediting payments on loans, and the disposition of related financial transactions, as provided in regulations prescribed by the Director.

[(2) OTHER LIABILITIES.—To such extent as the Director may authorize in writing, a Federal savings association may borrow, may give security, may be surety as defined by the Director and may issue such notes, bonds, debentures, or other obligations, or other securities, including capital stock.

[(3) LOANS FROM STATE HOUSING FINANCE AGENCIES.—

[(A) IN GENERAL.—Subject to regulation by the Director but without regard to any other provision of this subsection, any Federal savings association that is in compliance with the capital standards in effect under subsection (t) may borrow funds from a State mortgage finance agency of the State in which the head office of such savings association is situated to the same extent as State law authorizes a savings association organized under the laws of such State to borrow from the State mortgage finance agency.

[(B) INTEREST RATE.—A Federal savings association may not make any loan of funds borrowed under subparagraph (A) at an interest rate which exceeds by more than 1¾ percent per annum the interest rate paid to the State mortgage finance agency on the obligations issued to obtain the funds so borrowed.

[(4) MUTUAL CAPITAL CERTIFICATES.—In accordance with regulations issued by the Director, mutual capital certificates may be issued and sold directly to subscribers or through underwriters. Such certificates may be included in calculating capital for the purpose of subsection (t) to the extent permitted by the Director. The issuance of certificates under this paragraph does not constitute a change of control or ownership under this Act or any other law unless there is in fact a change in control or reorganization. Regulations relating to the issuance and sale of mutual capital certificates shall provide that such certificates—

[(A) are subordinate to all savings accounts, savings certificates, and debt obligations;

[(B) constitute a claim in liquidation on the general reserves, surplus, and undivided profits of the Federal savings association remaining after the payment in full of all savings accounts, savings certificates, and debt obligations;

[(C) are entitled to the payment of dividends; and

[(D) may have a fixed or variable dividend rate.

[(c) LOANS AND INVESTMENTS.—To the extent specified in regulations of the Director, a Federal savings association may invest in, sell, or otherwise deal in the following loans and other investments:

[(1) LOANS OR INVESTMENTS WITHOUT PERCENTAGE OF ASSETS LIMITATION.—Without limitation as a percentage of assets, the following are permitted:

[(A) ACCOUNT LOANS.—Loans on the security of its savings accounts and loans specifically related to transaction accounts.

[(B) RESIDENTIAL REAL PROPERTY LOANS.—Loans on the security of liens upon residential real property.

[(C) UNITED STATES GOVERNMENT SECURITIES.—Investments in obligations of, or fully guaranteed as to principal and interest by, the United States.

[(D) FEDERAL HOME LOAN BANK AND FEDERAL NATIONAL MORTGAGE ASSOCIATION SECURITIES.—Investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association.

[(E) FEDERAL HOME LOAN MORTGAGE CORPORATION INSTRUMENTS.—Investments in mortgages, obligations, or other securities which are or have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act.

[(F) OTHER GOVERNMENT SECURITIES.—Investments in obligations, participations, securities, or other instruments issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or any agency of the United States. A savings association may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act.

[(G) DEPOSITS.—Investments in accounts of any insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act.

[(H) STATE SECURITIES.—Investments in obligations issued by any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision). A Federal savings association may not invest more than 10 percent of its capital in obligations of any one issuer, exclusive of investments in general obligations of any issuer.

[(I) PURCHASE OF INSURED LOANS.—Purchase of loans secured by liens on improved real estate which are insured or guaranteed under the National Housing Act, the Servicemen's Readjustment Act of 1944, or chapter 37 of title 38, United States Code.

[(J) HOME IMPROVEMENT AND MANUFACTURED HOME LOANS.—Loans made to repair, equip, alter, or improve any residential real property, and loans made for manufactured home financing.

[(K) INSURED LOANS TO FINANCE THE PURCHASE OF FEE SIMPLE.—Loans insured under section 240 of the National Housing Act.

[(L) LOANS TO FINANCIAL INSTITUTIONS, BROKERS, AND DEALERS.—Loans to—

[(i) financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or

[(ii) any broker or dealer registered with the Securities and Exchange Commission,

which are secured by loans, obligations, or investments in which the Federal savings association has the statutory authority to invest directly.

[(M) LIQUIDITY INVESTMENTS.—Investments which, when made, are of a type that may be used to satisfy any liquidity requirement imposed by the Director pursuant to section 6.

[(N) INVESTMENT IN THE NATIONAL HOUSING PARTNERSHIP CORPORATION, PARTNERSHIPS, AND JOINT VENTURES.—Investments in shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and investments in any partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of such Act.

[(O) CERTAIN HUD INSURED OR GUARANTEED INVESTMENTS.—Loans that are secured by mortgages—

[(i) insured under title X of the National Housing Act, or

[(ii) guaranteed under title IV of the Housing and Urban Development Act of 1968, under part B of the National Urban Policy and New Community Development Act of 1970, or under section 802 of the Housing and Community Development Act of 1974.

[(P) STATE HOUSING CORPORATION INVESTMENTS.—Obligations of and loans to any State housing corporation, if—

[(i) such obligations or loans are secured directly, or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the provisions of the National Housing Act, and

[(ii) in the event of default, the holder of the obligations or loans has the right directly, or indirectly through an agent or fiduciary, to cause to be subject to the satisfaction of such obligations or loans the real estate described in the first lien or the insurance proceeds under the National Housing Act.

[(Q) INVESTMENT COMPANIES.—A Federal savings association may invest in, redeem, or hold shares or certificates issued by any open-end management investment company which—

[(i) is registered with the Securities and Exchange Commission under the Investment Company Act of 1940, and

[(ii) the portfolio of which is restricted by such management company's investment policy (changeable only

if authorized by shareholder vote) solely to investments that a Federal savings association by law or regulation may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in.

[(R) MORTGAGE-BACKED SECURITIES.—Investments in securities that—

[(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933; or

[(ii) are mortgage related securities (as defined in section 3(a)(41) of the Securities Exchange Act of 1934),

subject to such regulations as the Director may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales price, or both.

[(S) SMALL BUSINESS RELATED SECURITIES.—Investments in small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934), subject to such regulations as the Director may prescribe, including regulations concerning the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both.

[(T) CREDIT CARD LOANS.—Loans made through credit cards or credit card accounts.

[(U) EDUCATIONAL LOANS.—Loans made for the payment of educational expenses.

[(2) LOANS OR INVESTMENTS LIMITED TO A PERCENTAGE OF ASSETS OR CAPITAL.—The following loans or investments are permitted, but only to the extent specified:

[(A) COMMERCIAL AND OTHER LOANS.—Secured or unsecured loans for commercial, corporate, business, or agricultural purposes. The aggregate amount of loans made under this subparagraph may not exceed 20 percent of the total assets of the Federal savings association, and amounts in excess of 10 percent of such total assets may be used under this subparagraph only for small business loans, as that term is defined by the Director.

[(B) NONRESIDENTIAL REAL PROPERTY LOANS.—

[(i) IN GENERAL.—Loans on the security of liens upon nonresidential real property. Except as provided in clause (ii), the aggregate amount of such loans shall not exceed 400 percent of the Federal savings association's capital, as determined under subsection (t).

[(ii) EXCEPTION.—The Director may permit a savings association to exceed the limitation set forth in clause (i) if the Director determines that the increased authority—

[(I) poses no significant risk to the safe and sound operation of the association, and

[(II) is consistent with prudent operating practices.

[(iii) MONITORING.—If the Director permits any increased authority pursuant to clause (ii), the Director

shall closely monitor the Federal savings association's condition and lending activities to ensure that the savings association carries out all authority under this paragraph in a safe and sound manner and complies with this subparagraph and all relevant laws and regulations.

[(C) INVESTMENTS IN PERSONAL PROPERTY.—Investments in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for rental or sale. Investments under this subparagraph may not exceed 10 percent of the assets of the Federal savings association.

[(D) CONSUMER LOANS AND CERTAIN SECURITIES.—A Federal savings association may make loans for personal, family, or household purposes, including loans reasonably incident to providing such credit, and may invest in, sell, or hold commercial paper and corporate debt securities, as defined and approved by the Director. Loans and other investments under this subparagraph may not exceed 35 percent of the assets of the Federal savings association, except that amounts in excess of 30 percent of the assets may be invested only in loans which are made by the association directly to the original obligor and with respect to which the association does not pay any finder, referral, or other fee, directly or indirectly, to any third party.

[(3) LOANS OR INVESTMENTS LIMITED TO 5 PERCENT OF ASSETS.—The following loans or investments are permitted, but not to exceed 5 percent of assets of a Federal savings association for each subparagraph:

[(A) COMMUNITY DEVELOPMENT INVESTMENTS.—Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974. No investment under this subparagraph in such real property may exceed an aggregate of 2 percent of the assets of the Federal savings association.

[(B) NONCONFORMING LOANS.—Loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes that do not comply with the limitations of this subsection.

[(C) CONSTRUCTION LOANS WITHOUT SECURITY.—Loans—

[(i) the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate; and

[(ii) with respect to which the association—

[(I) relies substantially on the borrower's general credit standing and projected future income for repayment, without other security; or

[(II) relies on other assurances for repayment, including a guarantee or similar obligation of a third party.

The aggregate amount of such investments shall not exceed the greater of the Federal savings association's capital or 5 percent of its assets.

[(4) OTHER LOANS AND INVESTMENTS.—The following additional loans and other investments to the extent authorized below:

[(A) BUSINESS DEVELOPMENT CREDIT CORPORATIONS.—A Federal savings association that is in compliance with the capital standards prescribed under subsection (t) may invest in, lend to, or to commit itself to lend to, any business development credit corporation incorporated in the State in which the home office of the association is located in the same manner and to the same extent as savings associations chartered by such State are authorized. The aggregate amount of such investments, loans, and commitments of any such Federal savings association shall not exceed one-half of 1 percent of the association's total outstanding loans or $250,000, whichever is less.

[(B) SERVICE CORPORATIONS.—Investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the Federal savings association's home office is located, if such corporation's entire capital stock is available for purchase only by savings associations of such State and by Federal associations having their home offices in such State. No Federal savings association may make any investment under this subparagraph if the association's aggregate outstanding investment under this subparagraph would exceed 3 percent of the association's assets. Not less than one-half of the investment permitted under this subparagraph which exceeds 1 percent of the association's assets shall be used primarily for community, inner-city, and community development purposes.

[(C) FOREIGN ASSISTANCE INVESTMENTS.—Investments in housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961 or loans having the benefit of any guarantee under section 224 of such Act, or any commitment or agreement with respect to such loans made pursuant to either of such sections and in the share capital and capital reserve of the Inter-American Savings and Loan Bank. This authority extends to the acquisition, holding, and disposition of loans guaranteed under section 221 or 222 of such Act. Investments under this subparagraph shall not exceed 1 percent of the Federal savings association's assets.

[(D) SMALL BUSINESS INVESTMENT COMPANIES.—A Federal savings association may invest in stock, obligations, or other securities of any small business investment company formed pursuant to section 301(d) of the Small Business Investment Act of 1958 for the purpose of aiding members of a Federal home loan bank. A Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this

subparagraph would exceed 1 percent of the assets of such savings association.

[(E) BANKERS' BANKS.—A Federal savings association may purchase for its own account shares of stock of a bankers' bank, described in Paragraph Seventh of section 5136 of the Revised Statutes or in section 5169(b) of the Revised Statutes, on the same terms and conditions as a national bank may purchase such shares.

[(5) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—

[(A) IN GENERAL.—If, under section 5(d)(3) of the Federal Deposit Insurance Act, a savings association acquires all or substantially all of the assets of a bank that is a member of the Bank Insurance Fund, the Director may permit the savings association to retain any such asset during the 2-year period beginning on the date of the acquisition.

[(B) EXTENSION.—The Director may extend the 2-year period described in subparagraph (A) for not more than 1 year at a time and not more than 2 years in the aggregate, if the Director determines that the extension is consistent with the purposes of this Act.

[(6) DEFINITIONS.—As used in this subsection—

[(A) RESIDENTIAL PROPERTY.—The terms "residential real property" or "residential real estate" mean leaseholds, homes (including condominiums and cooperatives, except that in connection with loans on individual cooperative units, such loans shall be adequately secured as defined by the Director) and, combinations of homes or dwelling units and business property, involving only minor or incidental business use, or property to be improved by construction of such structures.

[(B) LOANS.—The term "loans" includes obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment.

[(d) REGULATORY AUTHORITY.—

[(1) IN GENERAL.—

[(A) ENFORCEMENT.—The Director shall have power to enforce this section, section 8 of the Federal Deposit Insurance Act, and regulations prescribed hereunder. In enforcing any provision of this section, regulations prescribed under this section, or any other law or regulation, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director's own name and through the Director's own attorneys. Except as otherwise provided, the Director shall be subject to suit (other than suits on claims for money damages) by any Federal savings association or director or officer thereof with respect to any matter under this section or any other applicable law, or regulation thereunder, in the United States district court for the judicial district in which the savings associa-

tion's home office is located, or in the United States District Court for the District of Columbia, and the Director may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

[(B) ANCILLARY PROVISIONS.—(i) In making examinations of savings associations, examiners appointed by the Director shall have power to make such examinations of the affairs of all affiliates of such savings associations as shall be necessary to disclose fully the relations between such savings associations and their affiliates and the effect of such relations upon such savings associations. For purposes of this subsection, the term "affiliate" has the same meaning as in section 2(b) of the Banking Act of 1933, except that the term "member bank" in section 2(b) shall be deemed to refer to a savings association.

[(ii) In the course of any examination of any savings association, upon request by the Director, prompt and complete access shall be given to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

[(iii) Upon request made in the course of supervision or oversight of any savings association, for the purpose of acting on any application or determining the condition of any savings association, including whether operations are being conducted safely, soundly, or in compliance with charters, laws, regulations, directives, written agreements, or conditions imposed in writing in connection with the granting of an application or other request, the Director shall be given prompt and complete access to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

[(iv) If prompt and complete access upon request is not given as required in this subsection, the Director may apply to the United States district court for the judicial district (or the United States court in any territory) in which the principal office of the institution is located, or in which the person denying such access resides or carries on business, for an order requiring that such information be promptly provided.

[(v) In connection with examinations of savings associations and affiliates thereof, the Director may—

> [(I) administer oaths and affirmations and examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such savings association or affiliate, and
>
> [(II) issue subpenas and, for the enforcement thereof, apply to the United States district court for the judicial district (or the United States court in any territory) in which the principal office of the savings association or affiliate is located, or in which the witness resides or carries on business.

Such courts shall have jurisdiction and power to order and require compliance with any such subpena.

[(vi) In any proceeding under this section, the Director may administer oaths and affirmations, take depositions, and issue subpenas. The Director may prescribe regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted.

[(vii) Any party to a proceeding under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district (or the United States court in any territory) in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena issued pursuant to this subsection or section 10(c) of the Federal Deposit Insurance Act, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the Director in connection with this section shall be considered as nonadministrative expenses. Any court having jurisdiction of any proceeding instituted under this section by a savings association, or a director or officer thereof, may allow to any such party reasonable expenses and attorneys' fees. Such expenses and fees shall be paid by the savings association.

[(2) CONSERVATORSHIPS AND RECEIVERSHIPS.—

[(A) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER FOR INSURED SAVINGS ASSOCIATION.—The Director of the Office of Thrift Supervision may appoint a conservator or receiver for any insured savings association if the Director determines, in the Director's discretion, that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act exists.

[(B) POWER OF APPOINTMENT; JUDICIAL REVIEW.—The Director shall have exclusive power and jurisdiction to appoint a conservator or receiver for a Federal savings association. If, in the opinion of the Director, a ground for the appointment of a conservator or receiver for a savings association exists, the Director is authorized to appoint ex parte and without notice a conservator or receiver for the savings association. In the event of such appointment, the association may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the Director to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the Director to remove such conservator or receiver. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or

proceeding during the pendency of the action for removal of the conservator or receiver.

[(C) REPLACEMENT.—The Director may, without any prior notice, hearing, or other action, replace a conservator with another conservator or with a receiver, but such replacement shall not affect any right which the association may have to obtain judicial review of the original appointment, except that any removal under this subparagraph shall be removal of the conservator or receiver in office at the time of such removal.

[(D) COURT ACTION.—Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver or, except at the request of the Director, to restrain or affect the exercise of powers or functions of a conservator or receiver.

[(E) POWERS.—

[(i) IN GENERAL.—A conservator shall have all the powers of the members, the stockholders, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the Director.

[(ii) FDIC OR RTC AS CONSERVATOR OR RECEIVER.—Except as provided in section 21A of the Federal Home Loan Bank Act, the Director, at the Director's discretion, may appoint the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, as appropriate, as conservator for a savings association. The Director shall appoint only the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, as appropriate, as receiver for a savings association for the purpose of liquidation or winding up the affairs of such savings association. The conservator or receiver so appointed shall, as such, have power to buy at its own sale. The Federal Deposit Insurance Corporation, as such conservator or receiver, shall have all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law.

[(F) DISCLOSURE REQUIREMENT FOR THOSE ACTING ON BEHALF OF CONSERVATOR.—A conservator shall require that any independent contractor, consultant, or counsel employed by the conservator in connection with the conservatorship of a savings association pursuant to this section shall fully disclose to all parties with which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant, or counsel to make legally binding representations on behalf of the conservator.

[(3) REGULATIONS.—

[(A) IN GENERAL.—The Director may prescribe regulations for the reorganization, consolidation, liquidation, and dissolution of savings associations, for the merger of insured savings associations with insured savings associations, for savings associations in conservatorship and receivership, and for the conduct of conservatorships and receiverships. The Director may, by regulation or otherwise, provide for the exercise of functions by members, stockholders, directors, or officers of a savings association during conservatorship and receivership.

[(B) FDIC OR RTC AS CONSERVATOR OR RECEIVER.—In any case where the Federal Deposit Insurance Corporation or the Resolution Trust Corporation is the conservator or receiver, any regulations prescribed by the Director shall be consistent with any regulations prescribed by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act.

[(4) REFUSAL TO COMPLY WITH DEMAND.—Whenever a conservator or receiver appointed by the Director demands possession of the property, business, and assets of any savings association, or of any part thereof, the refusal by any director, officer, employee, or agent of such association to comply with the demand shall be punishable by a fine of not more than $5,000 or imprisonment for not more than one year, or both.

[(5) DEFINITIONS.—As used in this subsection, the term "savings association" includes any savings association or former savings association that retains deposits insured by the Corporation, notwithstanding termination of its status as an institution insured by the Corporation.

[(6) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

[(A) COMPLIANCE PROCEDURES REQUIRED.—The Director shall prescribe regulations requiring savings associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

[(B) EXAMINATIONS OF SAVINGS ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

[(i) IN GENERAL.—Each examination of a savings association by the Director shall include a review of the procedures required to be established and maintained under subparagraph (A).

[(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

[(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the Director determines that a savings association—

[(i) has failed to establish and maintain the procedures described in subparagraph (A); or

[(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Director,

the Director shall issue an order under section 8 of the Federal Deposit Insurance Act requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.

[(e) CHARACTER AND RESPONSIBILITY.—A charter may be granted only—

[(1) to persons of good character and responsibility,

[(2) if in the judgment of the Director a necessity exists for such an institution in the community to be served,

[(3) if there is a reasonable probability of its usefulness and success, and

[(4) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.

[(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—Each Federal savings association, upon receiving its charter, shall become automatically a member of the Federal home loan bank of the district in which it is located, or if convenience requires and the Director approves, shall become a member of a Federal home loan bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.

[(h) DISCRIMINATORY STATE AND LOCAL TAXATION PROHIBITED.—No State, county, municipal, or local taxing authority may impose any tax on Federal savings associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

[(i) CONVERSIONS.—

[(1) IN GENERAL.—Any savings association which is, or is eligible to become, a member of a Federal home loan bank may convert into a Federal savings association (and in so doing may change directly from the mutual form to the stock form, or from the stock form to the mutual form). Such conversion shall be subject to such regulations as the Director shall prescribe. Thereafter such Federal savings association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.

[(2) AUTHORITY OF DIRECTOR.—(A) No savings association may convert from the mutual to the stock form, or from the stock form to the mutual form, except in accordance with the regulations of the Director.

[(B) Any aggrieved person may obtain review of a final action of the Director which approves or disapproves a plan of conversion pursuant to this subsection only by complying with the provisions of section 10(j) of this Act within the time limit and in the manner therein prescribed, which provisions shall apply in all respects as if such final action were an order the review of which is therein provided for, except that such time limit shall commence upon publication of notice of such final action in the Federal Register or upon the giving of such general notice of such final action as is required by or approved under regulations of the Director, whichever is later.

[(C) Any Federal savings association may change its designation from a Federal savings association to a Federal savings bank, or the reverse.

[(3) CONVERSION TO STATE ASSOCIATION.—(A) Any Federal savings association may convert itself into a savings association or savings bank organized pursuant to the laws of the State in which the principal office of such Federal savings association is located if—

[(i) the State permits the conversion of any savings association or savings bank of such State into a Federal savings association;

[(ii) such conversion of a Federal savings association into such a State savings association is determined—

[(I) upon the vote in favor of such conversion cast in person or by proxy at a special meeting of members or stockholders called to consider such action, specified by the law of the State in which the home office of the Federal savings association is located, as required by such law for a State-chartered institution to convert itself into a Federal savings association, but in no event upon a vote of less than 51 percent of all the votes cast at such meeting, and

[(II) upon compliance with other requirements reciprocally equivalent to the requirements of such State law for the conversion of a State-chartered institution into a Federal savings association;

[(iii) notice of the meeting to vote on conversion shall be given as herein provided and no other notice thereof shall be necessary; the notice shall expressly state that such meeting is called to vote thereon, as well as the time and place thereof; and such notice shall be mailed, postage prepaid, at least 30 and not more than 60 days prior to the date of the meeting, to the Director and to each member or stockholder of record of the Federal savings association at the member's or stockholder's last address as shown on the books of the Federal savings association;

[(iv) when a mutual savings association is dissolved after conversion, the members or shareholders of the savings association will share on a mutual basis in the assets of the association in exact proportion to their relative share or account credits;

[(v) when a stock savings association is dissolved after conversion, the stockholders will share on an equitable basis in the assets of the association; and

[(vi) such conversion shall be effective upon the date that all the provisions of this Act shall have been fully complied with and upon the issuance of a new charter by the State wherein the savings association is located.

[(B)(i) The act of conversion constitutes consent by the institution to be bound by all the requirements that the Director may impose under this Act.

[(ii) The savings association shall upon conversion and thereafter be authorized to issue securities in any form cur-

rently approved at the time of issue by the Director for issuance by similar savings associations in such State.

[(iii) If the insurance of accounts is terminated in connection with such conversion, the notice and other action shall be taken as provided by law and regulations for the termination of insurance of accounts.

[(4) SAVINGS BANK ACTIVITIES.—(A) To the extent authorized by the Director, but subject to section 18(m)(3) of the Federal Deposit Insurance Act—

[(i) any Federal savings bank chartered as such prior to October 15, 1982, may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was permitted to do so as a Federal savings bank prior to October 15, 1982; and

[(ii) any Federal savings bank in existence on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and formerly organized as a mutual savings bank under State law may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was authorized to do so as a mutual savings bank under State law.

[(B) The authority conferred by this paragraph may be utilized by any Federal savings association that acquires, by merger or consolidation, a Federal savings bank enjoying grandfather rights hereunder.

[(k) DEPOSITORY OF PUBLIC MONEY.—When designated for that purpose by the Secretary of the Treasury, a savings association the deposits of which are insured by the Corporation shall be a depository of public money and may be employed as fiscal agent of the Government under such regulations as may be prescribed by the Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. A savings association the deposits of which are insured by the Corporation may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality, including services in connection with the collection of taxes and other obligations owed the United States, and the Secretary of the Treasury may deposit public money in any such savings association, and shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

[(l) RETIREMENT ACCOUNTS.—A Federal savings association is authorized to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) of the Internal Revenue Code of 1986 and to act as trustee or custodian of an individual retirement account within the meaning of section 408 of such Code if the funds of such trust or account are invested only in savings accounts or deposits in such Federal savings association or in obligations or securities issued by such Federal savings association. All funds held in such fiduciary capacity by any Federal savings association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall

show in proper detail all transactions engaged in under this paragraph.

[(m) BRANCHING.—

[(1) IN GENERAL.—

[(A) No savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Director's prior written approval.

[(B) No savings association shall establish any branch in the District of Columbia or move its principal office or any branch in the District without the Director's prior written approval.

[(2) DEFINITION.—For purposes of this subsection the term "branch" means any office, place of business, or facility, other than the principal office as defined by the Director, of a savings association at which accounts are opened or payments are received or withdrawals are made, or any other office, place of business, or facility of a savings association defined by the Director as a branch within the meaning of such sentence.

[(n) TRUSTS.—

[(1) PERMITS.—The Director may grant by special permit to a Federal savings association applying therefor the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which compete with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located. Subject to the regulations of the Director, service corporations may invest in State or federally chartered corporations which are located in the State in which the home office of the Federal savings association is located and which are engaged in trust activities.

[(2) SEGREGATION OF ASSETS.—A Federal savings association exercising any or all of the powers enumerated in this section shall segregate all assets held in any fiduciary capacity from the general assets of the association and shall keep a separate set of books and records showing in proper detail all transactions engaged in under this subsection. The State banking authority involved may have access to reports of examination made by the Director insofar as such reports relate to the trust department of such association but nothing in this subsection shall be construed as authorizing such State banking authority to examine the books, records, and assets of such associations.

[(3) PROHIBITIONS.—No Federal savings association shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the association awaiting investment shall be carried in a separate account and shall not be used by the association in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Director.

[(4) SEPARATE LIEN.—In the event of the failure of a Federal savings association, the owners of the funds held in trust for

investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the association.

[(5) DEPOSITS.—Whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, Federal savings associations so acting shall be required to make similar deposits. Securities so deposited shall be held for the protection of private or court trusts, as provided by the State law. Federal savings associations in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement. Federal savings associations shall have power to execute such bond when so required by the laws of the State involved.

[(6) OATHS AND AFFIDAVITS.—In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make an affidavit, the president, vice president, cashier, or trust officer of such association may take the necessary oath or execute the necessary affidavit.

[(7) CERTAIN LOANS PROHIBITED.—It shall be unlawful for any Federal savings association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than $50,000 or twice the amount of that person's gain from the loan, whichever is greater, or may be imprisoned not more than 5 years, or may be both fined and imprisoned, in the discretion of the court.

[(8) FACTORS TO BE CONSIDERED.—In reviewing applications for permission to exercise the powers enumerated in this section, the Director may consider—

[(A) the amount of capital of the applying Federal savings association,

[(B) whether or not such capital is sufficient under the circumstances of the case,

[(C) the needs of the community to be served, and

[(D) any other facts and circumstances that seem to it proper.

The Director may grant or refuse the application accordingly, except that no permit shall be issued to any association having capital less than the capital required by State law of State banks, trust companies, and corporations exercising such powers.

[(9) SURRENDER OF CHARTER.—(A) Any Federal savings association may surrender its right to exercise the powers granted under this subsection, and have returned to it any securities which it may have deposited with the State authorities, by filing with the Director a certified copy of a resolution of its board of directors indicating its intention to surrender its right.

[(B) Upon receipt of such resolution, the Director, if satisfied that such Federal savings association has been relieved in accordance with State law of all duties as trustee, executor, ad-

ministrator, guardian or other fiduciary, may in the Director's discretion, issue to such association a certificate that such association is no longer authorized to exercise the powers granted by this subsection.

[(C) Upon the issuance of such a certificate by the Director, such Federal savings association (i) shall no longer be subject to the provisions of this section or the regulations of the Director made pursuant thereto, (ii) shall be entitled to have returned to it any securities which it may have deposited with State authorities, and (iii) shall not exercise thereafter any of the powers granted by this section without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this section.

[(D) The Director may prescribe regulations necessary to enforce compliance with the provisions of this subsection.

[(10) REVOCATION.—(A) In addition to the authority conferred by other law, if, in the opinion of the Director, a Federal savings association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of 5 consecutive years to exercise, the powers granted by this subsection or otherwise fails or has failed to comply with the requirements of this subsection, the Director may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this subsection. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

[(B) Such hearing shall be conducted in accordance with the provisions of subsection (d)(1)(B), and subject to judicial review as therein provided, and shall be fixed for a date not earlier than 30 days and not later than 60 days after service of such notice unless the Director sets an earlier or later date at the request of any Federal savings association so served.

[(C) Unless the Federal savings association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Director shall find that any allegation specified in the notice of charges has been established, the Director may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this subsection, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

[(D) A revocation order shall become effective not earlier than the expiration of 30 days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforce-

able, except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

[(o) CONVERSION OF STATE SAVINGS BANKS.—(1) Subject to the provisions of this subsection and under regulations of the Director, the Director may authorize the conversion of a State-chartered savings bank that is a Bank Insurance Fund member into a Federal savings bank, if such conversion is not in contravention of State law, and provide for the organization, incorporation, operation, examination, and regulation of such institution.

[(2)(A) Any Federal savings bank chartered pursuant to this subsection shall continue to be a Bank Insurance Fund member until such time as it changes its status to a Savings Association Insurance Fund member.

[(B) The Director shall notify the Corporation of any application under this Act for conversion to a Federal charter by an institution insured by the Corporation, shall consult with the Corporation before disposing of the application, and shall notify the Corporation of the Director's determination with respect to such application.

[(C) Notwithstanding any other provision of law, if the Corporation determines that conversion into a Federal stock savings bank or the chartering of a Federal stock savings bank is necessary to prevent the default of a savings bank it insures or to reopen a savings bank in default that it insured, or if the Corporation determines, with the concurrence of the Director, that severe financial conditions exist that threaten the stability of a savings bank insured by the Corporation and that such a conversion or charter is likely to improve the financial condition of such savings bank, the Corporation shall provide the Director with a certificate of such determination, the reasons therefor in conformance with the requirements of this Act, and the bank shall be converted or chartered by the Director, pursuant to the regulations thereof, from the time the Corporation issues the certificate.

[(D) A bank may be converted under subparagraph (C) only if the board of trustees of the bank—

[(i) has specified in writing that the bank is in danger of closing or is closed, or that severe financial conditions exist that threaten the stability of the bank and a conversion is likely to improve the financial condition of the bank; and

[(ii) has requested in writing that the Corporation use the authority of subparagraph (C).

[(E)(i) Before making a determination under subparagraph (D), the Corporation shall consult the State bank supervisor of the State in which the bank in danger of closing is chartered. The State bank supervisor shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of subparagraph (D).

[(ii) If the State supervisor objects during such period, the Corporation may use the authority of subparagraph (D) only by an affirmative vote of three-fourths of the Board of Directors. The Board of Directors shall provide the State supervisor, as soon as practicable, with a written certification of its determination.

[(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, oper-

ations, and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this Act.

[(p) CONVERSIONS.—(1) Notwithstanding any other provision of law, and consistent with the purposes of this Act, the Director may authorize (or in the case of a Federal savings association, require) the conversion of any mutual savings association or Federal mutual savings bank that is insured by the Corporation into a Federal stock savings association or Federal stock savings bank, or charter a Federal stock savings association or Federal stock savings bank to acquire the assets of, or merge with such a mutual institution under the regulations of the Director.

[(2) Authorizations under this subsection may be made only—

[(A) if the Director has determined that severe financial conditions exist which threaten the stability of an association and that such authorization is likely to improve the financial condition of the association,

[(B) when the Corporation has contracted to provide assistance to such association under section 13 of the Federal Deposit Insurance Act, or

[(C) to assist an institution in receivership.

[(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this Act, and may engage in any investment, activity, or operation that the institution it acquired was engaged in if that institution was a Federal savings bank, or would have been authorized to engage in had that institution converted to a Federal charter.

[(q) TYING ARRANGEMENTS.—(1) A savings association may not in any manner extend credit, lease, or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

[(A) that the customer shall obtain additional credit, property, or service from such savings association, or from any service corporation or affiliate of such association, other than a loan, discount, deposit, or trust service;

[(B) that the customer provide additional credit, property, or service to such association, or to any service corporation or affiliate of such association, other than those related to and usually provided in connection with a similar loan, discount, deposit, or trust service; and

[(C) that the customer shall not obtain some other credit, property, or service from a competitor of such association, or from a competitor of any service corporation or affiliate of such association, other than a condition or requirement that such association shall reasonably impose in connection with credit transactions to assure the soundness of credit.

[(2)(A) Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of para-

graph (1), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings.

[(B) Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

[(3) Any person injured by a violation of paragraph (1) may bring an action in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, or in any other court of competent jurisdiction, and shall be entitled to recover three times the amount of the damages sustained, and the cost of suit, including a reasonable attorney's fee. Any such action shall be brought within 4 years from the date of the occurrence of the violation.

[(4) Nothing contained in this subsection affects in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this subsection. No regulation or order issued by the Director under this subsection shall in any manner constitute a defense to such action.

[(5) For purposes of this subsection, the term "loan" includes obligations and extensions or advances of credit.

[(6) EXCEPTIONS.—The Director may, by regulation or order, permit such exceptions to the prohibitions of this subsection as the Director considers will not be contrary to the purposes of this subsection and which conform to exceptions granted by the Board of Governors of the Federal Reserve System pursuant to section 106(b) of the Bank Holding Company Act Amendments of 1970.

[(r) OUT-OF-STATE BRANCHES.—(1) No Federal savings association may establish, retain, or operate a branch outside the State in which the Federal savings association has its home office, unless the association qualifies as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 or meets the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify, or qualifies as a qualified thrift lender, as determined under section 10(m) of this Act. No out-of-State branch so established shall be retained or operated unless the total assets of the Federal savings association attributable to all branches of the Federal savings association in that State would qualify the branches as a whole, were they otherwise eligible, for treatment as a domestic building and loan association under section 7701(a)(19) or as a qualified thrift lender, as determined under section 10(m) of this Act, as applicable.

[(2) The limitations of paragraph (1) shall not apply if—

[(A) the branch results from a transaction authorized under section 13(k) of the Federal Deposit Insurance Act;

[(B) the branch was authorized for the Federal savings association prior to October 15, 1982;

[(C) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the

association was a savings association or savings bank chartered by the State in which its home office is located; or

[(D) the branch was operated lawfully as a branch under State law prior to the association's conversion to a Federal charter.

[(3) The Director, for good cause shown, may allow Federal savings associations up to 2 years to comply with the requirements of this subsection.

[(s) MINIMUM CAPITAL REQUIREMENTS.—

[(1) IN GENERAL.—Consistent with the purposes of section 908 of the International Lending Supervision Act of 1983 and the capital requirements established pursuant to such section by the appropriate Federal banking agencies (as defined in section 903(1) of such Act), the Director shall require all savings associations to achieve and maintain adequate capital by—

[(A) establishing minimum levels of capital for savings associations; and

[(B) using such other methods as the Director determines to be appropriate.

[(2) MINIMUM CAPITAL LEVELS MAY BE DETERMINED BY DIRECTOR CASE-BY-CASE.—The Director may, consistent with subsection (t), establish the minimum level of capital for a savings association at such amount or at such ratio of capital-to-assets as the Director determines to be necessary or appropriate for such association in light of the particular circumstances of the association.

[(3) UNSAFE OR UNSOUND PRACTICE.—In the Director's discretion, the Director may treat the failure of any savings association to maintain capital at or above the minimum level required by the Director under this subsection or subsection (t) as an unsafe or unsound practice.

[(4) DIRECTIVE TO INCREASE CAPITAL.—

[(A) PLAN MAY BE REQUIRED.—In addition to any other action authorized by law, including paragraph (3), the Director may issue a directive requiring any savings association which fails to maintain capital at or above the minimum level required by the Director to submit and adhere to a plan for increasing capital which is acceptable to the Director.

[(B) ENFORCEMENT OF PLAN.—Any directive issued and plan approved under subparagraph (A) shall be enforceable under section 8 of the Federal Deposit Insurance Act to the same extent and in the same manner as an outstanding order which was issued under section 8 of the Federal Deposit Insurance Act and has become final.

[(5) PLAN TAKEN INTO ACCOUNT IN OTHER PROCEEDINGS.—The Director may—

[(A) consider a savings association's progress in adhering to any plan required under paragraph (4) whenever such association or any affiliate of such association (including any company which controls such association) seeks the Director's approval for any proposal which would have the effect of diverting earnings, diminishing capital, or oth-

erwise impeding such association's progress in meeting the minimum level of capital required by the Director; and

[(B) disapprove any proposal referred to in subparagraph (A) if the Director determines that the proposal would adversely affect the ability of the association to comply with such plan.

[(t) CAPITAL STANDARDS.—

[(1) IN GENERAL.—

[(A) REQUIREMENT FOR STANDARDS TO BE PRESCRIBED.—The Director shall, by regulation, prescribe and maintain uniformly applicable capital standards for savings associations. Those standards shall include—

[(i) a leverage limit;

[(ii) a tangible capital requirement; and

[(iii) a risk-based capital requirement.

[(B) COMPLIANCE.—A savings association is not in compliance with capital standards for purposes of this subsection unless it complies with all capital standards prescribed under this paragraph.

[(C) STRINGENCY.—The standards prescribed under this paragraph shall be no less stringent than the capital standards applicable to national banks.

[(D) DEADLINE FOR REGULATIONS.—The Director shall promulgate final regulations under this paragraph not later than 90 days after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and those regulations shall become effective not later than 120 days after the date of enactment.

[(2) CONTENT OF STANDARDS.—

[(A) LEVERAGE LIMIT.—The leverage limit prescribed under paragraph (1) shall require a savings association to maintain core capital in an amount not less than 3 percent of the savings association's total assets.

[(B) TANGIBLE CAPITAL REQUIREMENT.—The tangible capital requirement prescribed under paragraph (1) shall require a savings association to maintain tangible capital in an amount not less than 1.5 percent of the savings association's total assets.

[(C) RISK-BASED CAPITAL REQUIREMENT.—Notwithstanding paragraph (1)(C), the risk-based capital requirement prescribed under paragraph (1) may deviate from the risk-based capital standards applicable to national banks to reflect interest-rate risk or other risks, but such deviations shall not, in the aggregate, result in materially lower levels of capital being required of savings associations under the risk-based capital requirement than would be required under the risk-based capital standards applicable to national banks.

[(3) TRANSITION RULE.—

[(A) CERTAIN QUALIFYING SUPERVISORY GOODWILL INCLUDED IN CALCULATING CORE CAPITAL.—Notwithstanding paragraph (9)(A), an eligible savings association may include qualifying supervisory goodwill in calculating core capital. The amount of qualifying supervisory goodwill that

may be included may not exceed the applicable percentage of total assets set forth in the following table:

[For the following period:	The applicable percentage is:
Prior to January 1, 1992	1.500 percent
January 1, 1992–December 31, 1992	1.000 percent
January 1, 1993–December 31, 1993	0.750 percent
January 1, 1994–December 31, 1994	0.375 percent
Thereafter	0 percent

[(B) ELIGIBLE SAVINGS ASSOCIATIONS.—For purposes of subparagraph (A), a savings association is an eligible savings association so long as the Director determines that—

[(i) the savings association's management is competent;

[(ii) the savings association is in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and

[(iii) the savings association's management has not engaged in insider dealing, speculative practices, or any other activities that have jeopardized the association's safety and soundness or contributed to impairing the association's capital.

[(4) SPECIAL RULES FOR PURCHASED MORTGAGE SERVICING RIGHTS.—

[(A) IN GENERAL.—Notwithstanding paragraphs (1)(C) and (9), the standards prescribed under paragraph (1) may permit a savings association to include in calculating capital for the purpose of the leverage limit and risk-based capital requirement prescribed under paragraph (1), on terms no less stringent than under both the capital standards applicable to State nonmember banks and (except as to the amount that may be included in calculating capital) the capital standards applicable to national banks, 90 percent of the fair market value of readily marketable purchased mortgage servicing rights.

[(B) TANGIBLE CAPITAL REQUIREMENT.—Notwithstanding paragraphs (1)(C) and (9)(C), the standards prescribed under paragraph (1) may permit a savings association to include in calculating capital for the purpose of the tangible capital requirement prescribed under paragraph (1), on terms no less stringent than under both the capital standards applicable to State nonmember banks and (except as to the amount that may be included in calculating capital) the capital standards applicable to national banks, 90 percent of the fair market value of readily marketable purchased mortgage servicing rights.

[(C) PERCENTAGE LIMITATION PRESCRIBED BY FDIC.—Notwithstanding paragraph (1)(C) and subparagraphs (A) and (B) of this paragraph—

[(i) for the purpose of subparagraph (A), the maximum amount of purchased mortgage servicing rights that may be included in calculating capital under the leverage limit and the risk-based capital requirement prescribed under paragraph (1) may not exceed the

amount that could be included if the savings association were an insured State nonmember bank; and

[(ii) for the purpose of subparagraph (B), the Corporation shall prescribe a maximum percentage of the tangible capital requirement that savings associations may satisfy by including purchased mortgage servicing rights in calculating such capital.

[(D) QUARTERLY VALUATION.—The fair market value of purchased mortgage servicing rights shall be determined not less often than quarterly.

[(5) SEPARATE CAPITALIZATION REQUIRED FOR CERTAIN SUBSIDIARIES.—

[(A) IN GENERAL.—In determining compliance with capital standards prescribed under paragraph (1), all of a savings association's investments in and extensions of credit to any subsidiary engaged in activities not permissible for a national bank shall be deducted from the savings association's capital.

[(B) EXCEPTION FOR AGENCY ACTIVITIES.—Subparagraph (A) shall not apply with respect to a subsidiary engaged, solely as agent for its customers, in activities not permissible for a national bank unless the Corporation, in its sole discretion, determines that, in the interests of safety and soundness, this subparagraph should cease to apply to that subsidiary.

[(C) OTHER EXCEPTIONS.—Subparagraph (A) shall not apply with respect to any of the following:

[(i) MORTGAGE BANKING SUBSIDIARIES.—A savings association's investments in and extensions of credit to a subsidiary engaged solely in mortgage-banking activities.

[(ii) SUBSIDIARY INSURED DEPOSITORY INSTITUTIONS.—A savings association's investments in and extensions of credit to a subsidiary—

[(I) that is itself an insured depository institution or a company the sole investment of which is an insured depository institution, and

[(II) that was acquired by the parent insured depository institution prior to May 1, 1989.

[(iii) CERTAIN FEDERAL SAVINGS BANKS.—Any Federal savings association existing as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

[(I) that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law; or

[(II) that acquired its principal assets from an association that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law.

[(D) TRANSITION RULE.—

[(i) INCLUSION IN CAPITAL.—Notwithstanding subparagraph (A), if a savings association's subsidiary

was, as of April 12, 1989, engaged in activities not permissible for a national bank, the savings association may include in calculating capital the applicable percentage (set forth in clause (ii)) of the lesser of—

[(I) the savings association's investments in and extensions of credit to the subsidiary on April 12, 1989; or

[(II) the savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

[(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is as follows:

[For the following period:	The applicable percentage is:
Prior to July 1, 1990	100 percent
July 1, 1990–June 30, 1991	90 percent
July 1, 1991–October 31, 1992	75 percent
November 1, 1992–June 30, 1993	60 percent
July 1, 1993–June 30, 1994	40 percent
Thereafter	0 percent

[(iii) AGENCY DISCRETION TO PRESCRIBE GREATER PERCENTAGE.—Subject to clauses (iv), (v), and (vi), the Director may prescribe by order, with respect to a particular qualified savings association, an applicable percentage greater than that provided in clause (ii) if the Director determines, in the Director's sole discretion, that the use of the greater percentage, under the circumstances—

[(I) would not constitute an unsafe or unsound practice;

[(II) would not increase the risk to the affected deposit insurance fund; and

[(III) would not be likely to result in the association's being in an unsafe or unsound condition.

[(iv) SUBSTANTIAL COMPLIANCE WITH APPROVED CAPITAL PLAN.—In the case of a savings association which is subject to a plan submitted under paragraph (7)(D) of this subsection or an order issued under this subsection, a directive issued or plan approved under subsection (s), or a capital restoration plan approved or order issued under section 38 or 39 of the Federal Deposit Insurance Act, an order issued under clause (iii) with respect to the association shall be effective only so long as the association is in substantial compliance with such plan, directive, or order.

[(v) LIMITATION ON INVESTMENTS TAKEN INTO ACCOUNT.—In prescribing the amount by which an applicable percentage under clause (iii) may exceed the applicable percentage under clause (ii) with respect to a particular qualified savings association, the Director may take into account only the sum of—

[(I) the association's investments in, and extensions of credit to, the subsidiary that were made on or before April 12, 1989; and

[(II) the association's investments in, and extensions of credit to, the subsidiary that were made after April 12, 1989, and were necessary to complete projects initiated before April 12, 1989.

[(vi) LIMIT.—The applicable percentage limit allowed by the Director in an order under clause (iii) shall not exceed the following limits:

[For the following period:	The limit is:
Prior to July 1, 1994	75 percent
July 1, 1994 through June 30, 1995	60 percent
July 1, 1995 through June 30, 1996	40 percent
After June 30, 1996	0 percent

[(vii) CRITICALLY UNDERCAPITALIZED INSTITUTION.—In the case of a savings association that becomes critically undercapitalized (as defined in section 38 of the Federal Deposit Insurance Act) as determined under this subparagraph without applying clause (iii), clauses (iii) through (v) shall be applied by substituting "Corporation" for "Director" each place such term appears.

[(viii) QUALIFIED SAVINGS ASSOCIATION DEFINED.—For purposes of clause (iii), the term "qualified savings association" means an eligible savings association (as defined in paragraph (3)(B)) which is subject to this paragraph solely because of the real estate investments or other real estate activities of the association's subsidiary, and—

[(I) is adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act); or

[(II) is in compliance with an approved capital restoration plan meeting the requirements of section 38 of the Federal Deposit Insurance Act, and is not critically undercapitalized (as defined in such section).

[(ix) FDIC'S DISCRETION TO PRESCRIBE LESSER PERCENTAGE.—The Corporation may prescribe by order, with respect to a particular savings association, an applicable percentage less than that provided in clause (ii) or prescribed under clause (iii) if the Corporation determines, in its sole discretion, that the use of a greater percentage would, under the circumstances, constitute an unsafe or unsound practice or be likely to result in the association's being in an unsafe or unsound condition.

[(E) CONSOLIDATION OF SUBSIDIARIES NOT SEPARATELY CAPITALIZED.—In determining compliance with capital standards prescribed under paragraph (1), the assets and liabilities of each of a savings association's subsidiaries (other than any subsidiary described in subparagraph (C)(ii)) shall be consolidated with the savings association's assets and liabilities, unless all of the savings association's investments in and extensions of credit to the subsidiary

are deducted from the savings association's capital pursuant to subparagraph (A).

[(6) CONSEQUENCES OF FAILING TO COMPLY WITH CAPITAL STANDARDS.—

[(A) PRIOR TO JANUARY 1, 1991.—Prior to January 1, 1991, the Director—

[(i) may restrict the asset growth of any savings association not in compliance with capital standards; and

[(ii) shall, beginning 60 days following the promulgation of final regulations under this subsection, require any savings association not in compliance with capital standards to submit a plan under subsection (s)(4)(A) that—

[(I) addresses the savings association's need for increased capital;

[(II) describes the manner in which the savings association will increase its capital so as to achieve compliance with capital standards;

[(III) specifies the types and levels of activities in which the savings association will engage;

[(IV) requires any increase in assets to be accompanied by an increase in tangible capital not less in percentage amount than the leverage limit then applicable;

[(V) requires any increase in assets to be accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable; and

[(VI) is acceptable to the Director.

[(B) ON OR AFTER JANUARY 1, 1991.—On or after January 1, 1991, the Director—

[(i) shall prohibit any asset growth by any savings association not in compliance with capital standards, except as provided in subparagraph (C); and

[(ii) shall require any savings association not in compliance with capital standards to comply with a capital directive issued by the Director (which may include such restrictions, including restrictions on the payment of dividends and on compensation, as the Director determines to be appropriate).

[(C) LIMITED GROWTH EXCEPTION.—The Director may permit any savings association that is subject to subparagraph (B) to increase its assets in an amount not exceeding the amount of net interest credited to the savings association's deposit liabilities if—

[(i) the savings association obtains the Director's prior approval;

[(ii) any increase in assets is accompanied by an increase in tangible capital in an amount not less than 6 percent of the increase in assets (or, in the Director's discretion if the leverage limit then applicable is less than 6 percent, in an amount equal to the increase in

assets multiplied by the percentage amount of the leverage limit);

[(iii) any increase in assets is accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable;

[(iv) any increase in assets is invested in low-risk assets, such as first mortgage loans secured by 1- to 4-family residences and fully secured consumer loans; and

[(v) the savings association's ratio of core capital to total assets is not less than the ratio existing on January 1, 1991.

[(D) ADDITIONAL RESTRICTIONS IN CASE OF EXCESSIVE RISKS OR RATES.—The Director may restrict the asset growth of any savings association that the Director determines is taking excessive risks or paying excessive rates for deposits.

[(E) FAILURE TO COMPLY WITH PLAN, REGULATION, OR ORDER.—The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, or order under this paragraph.

[(F) EFFECT ON OTHER REGULATORY AUTHORITY.—This paragraph does not limit any authority of the Director under other provisions of law.

[(7) EXEMPTION FROM CERTAIN SANCTIONS.—

[(A) APPLICATION FOR EXEMPTION.—Any savings association not in compliance with the capital standards prescribed under paragraph (1) may apply to the Director for an exemption from any applicable sanction or penalty for noncompliance which the Director may impose under this Act.

[(B) EFFECT OF GRANT OF EXEMPTION.—If the Director approves any savings association's application under subparagraph (A), the only sanction or penalty to be imposed by the Director under this Act for the savings association's failure to comply with the capital standards prescribed under paragraph (1) is the growth limitation contained in paragraph (6)(B) or paragraph (6)(C), whichever is applicable.

[(C) STANDARDS FOR APPROVAL OR DISAPPROVAL.—

[(i) APPROVAL.—The Director may approve an application for an exemption if the Director determines that—

[(I) such exemption would pose no significant risk to the affected deposit insurance fund;

[(II) the savings association's management is competent;

[(III) the savings association is in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and

[(IV) the savings association's management has not engaged in insider dealing, speculative practices, or any other activities that have jeopardized the association's safety and soundness or contributed to impairing the association's capital.

[(ii) DENIAL OR REVOCATION OF APPROVAL.—The Director shall deny any application submitted under clause (i) and revoke any prior approval granted with respect to any such application if the Director determines that the association's failure to meet any capital standards prescribed under paragraph (1) is accompanied by—

[(I) a pattern of consistent losses;

[(II) substantial dissipation of assets;

[(III) evidence of imprudent management or business behavior;

[(IV) a material violation of any Federal law, any law of any State to which such association is subject, or any applicable regulation; or

[(V) any other unsafe or unsound condition or activity, other than the failure to meet such capital standards.

[(D) SUBMISSION OF PLAN REQUIRED.—Any application submitted under subparagraph (A) shall be accompanied by a plan which—

[(i) meets the requirements of paragraph (6)(A)(ii); and

[(ii) is acceptable to the Director.

[(E) FAILURE TO COMPLY WITH PLAN.—The Director shall treat as an unsafe and unsound practice any material failure by any savings association which has been granted an exemption under this paragraph to comply with the provisions of any plan submitted by such association under subparagraph (D).

[(F) EXEMPTION NOT AVAILABLE WITH RESPECT TO UNSAFE OR UNSOUND PRACTICES.—This paragraph does not limit any authority of the Director under any other provision of law, including section 8 of the Federal Deposit Insurance Act, to take any appropriate action with respect to any unsafe or unsound practice or condition of any savings association, other than the failure of such savings association to comply with the capital standards prescribed under paragraph (1).

[(8) TEMPORARY AUTHORITY TO MAKE EXCEPTIONS FOR ELIGIBLE SAVINGS ASSOCIATIONS.—

[(A) IN GENERAL.—Notwithstanding paragraph (1)(C), the Director may, by order, make exceptions to the capital standards prescribed under paragraph (1) for eligible savings associations. No exception under this paragraph shall be effective after January 1, 1991.

[(B) STANDARDS FOR APPROVAL OR DISAPPROVAL.—In determining whether to grant an exception under subparagraph (A), the Director shall apply the same standards as apply to determinations under paragraph (7)(C).

[(9) DEFINITIONS.—For purposes of this subsection—

[(A) CORE CAPITAL.—Unless the Director prescribes a more stringent definition, the term "core capital" means core capital as defined by the Comptroller of the Currency for national banks, less any unidentifiable intangible assets, plus any purchased mortgage servicing rights excluded from the Comptroller's definition of capital but included in calculating the core capital of savings associations pursuant to paragraph (4).

[(B) QUALIFYING SUPERVISORY GOODWILL.—The term "qualifying supervisory goodwill" means supervisory goodwill existing on April 12, 1989, amortized on a straightline basis over the shorter of—

[(i) 20 years, or

[(ii) the remaining period for amortization in effect on April 12, 1989.

[(C) TANGIBLE CAPITAL.—The term "tangible capital" means core capital minus any intangible assets (as intangible assets are defined by the Comptroller of the Currency for national banks).

[(D) TOTAL ASSETS.—The term "total assets" means total assets (as total assets are defined by the Comptroller of the Currency for national banks) adjusted in the same manner as total assets would be adjusted in determining compliance with the leverage limit applicable to national banks if the savings association were a national bank.

[(10) USE OF COMPTROLLER'S DEFINITIONS.—

[(A) IN GENERAL.—The standards prescribed under paragraph (1) shall include all relevant substantive definitions established by the Comptroller of the Currency for national banks.

[(B) SPECIAL RULE.—If the Comptroller of the Currency has not made effective regulations defining core capital or establishing a risk-based capital standard, the Director shall use the definition and standard contained in the Comptroller's most recently published final regulations.

[(u) LIMITS ON LOANS TO ONE BORROWER.—

[(1) IN GENERAL.—Section 5200 of the Revised Statutes shall apply to savings associations in the same manner and to the same extent as it applies to national banks.

[(2) SPECIAL RULES.—

[(A) Notwithstanding paragraph (1), a savings association may make loans to one borrower under one of the following clauses:

[(i) for any purpose, not to exceed $500,000; or

[(ii) to develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, if—

[(I) the purchase price of each single family dwelling unit the development of which is financed under this clause does not exceed $500,000;

[(II) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under subsection (t);

[(III) the Director, by order, permits the savings association to avail itself of the higher limit provided by this clause;

[(IV) loans made under this clause to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

[(V) such loans comply with all applicable loan-to-value requirements.

[(B) A savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted in good faith shall not exceed 50 percent of the savings association's unimpaired capital and unimpaired surplus.

[(3) AUTHORITY TO IMPOSE MORE STRINGENT RESTRICTIONS.—The Director may impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the safety and soundness of the savings association.

[(v) REPORTS OF CONDITION.—

[(1) IN GENERAL.—Each association shall make reports of conditions to the Director which shall be in a form prescribed by the Director and shall contain—

[(A) information sufficient to allow the identification of potential interest rate and credit risk;

[(B) a description of any assistance being received by the association, including the type and monetary value of such assistance;

[(C) the identity of all subsidiaries and affiliates of the association;

[(D) the identity, value, type, and sector of investment of all equity investments of the associations and subsidiaries; and

[(E) other information that the Director may prescribe.

[(2) PUBLIC DISCLOSURE.—

[(A) Reports required under paragraph (1) and all information contained therein shall be available to the public upon request, unless the Director determines—

[(i) that a particular item or classification of information should not be made public in order to protect the safety or soundness of the institution concerned or institutions concerned, the Savings Association Insurance Fund; or

[(ii) that public disclosure would not otherwise be in the public interest.

[(B) Any determination made by the Director under subparagraph (A) not to permit the public disclosure of information shall be made in writing, and if the Director restricts any item of information for savings institutions generally, the Director shall disclose the reason in detail in the Federal Register.

[(C) The Director's determinations under subparagraph (A) shall not be subject to judicial review.

[(3) ACCESS BY CERTAIN PARTIES.—

[(A) Notwithstanding paragraph (2), the persons described in subparagraph (B) shall not be denied access to any information contained in a report of condition, subject to reasonable requirements of confidentiality. Those requirements shall not prevent such information from being transmitted to the Comptroller General of the United States for analysis.

[(B) The following persons are described in this subparagraph for purposes of subparagraph (A):

[(i) the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and their designees; and

[(ii) the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and their designees.

[(4) FIRST TIER PENALTIES.—Any savings association which—

[(A) maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error—

[(i) fails to submit or publish any report or information required by the Director under paragraph (1) or (2), within the period of time specified by the Director; or

[(ii) submits or publishes any false or misleading report or information; or

[(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The savings association shall have the burden of proving by a preponderence of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

[(5) SECOND TIER PENALTIES.—Any savings association which—

[(A) fails to submit or publish any report or information required by the Director under paragraph (1) or (2), within the period of time specified by the Director; or

[(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (4) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

[(6) THIRD TIER PENALTIES.—If any savings association knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (5) submits or publishes any false or misleading report or information, the Director may assess a penalty of not more than $1,000,000 or 1 percent of total assets, whichever is less, per day for each day

during which such failure continues or such false or misleading information is not corrected.

[(7) ASSESSMENT.—Any penalty imposed under paragraph (4), (5), or (6) shall be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section), and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

[(8) HEARING.—Any savings association against which any penalty is assessed under this subsection shall be afforded a hearing if such savings association submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

[(w) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

[(1) IN GENERAL.—

[(A) CONVICTION OF TITLE 18 OFFENSE.—

[(I) DUTY TO NOTIFY.—If a Federal savings association has been convicted of any criminal offense under section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Director a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

[(II) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Director shall issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

[(B) CONVICTION OF TITLE 31 OFFENSES.—If a Federal savings association is convicted of any criminal offense under section 5322 or 5324 of title 31, United States Code, after receiving written notification from the Attorney General, the Director may issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

[(C) JUDICIAL REVIEW.—Subsection (d)(1)(B)(vii) shall apply to any proceeding under this subsection.

[(2) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited under paragraph (1), the Director shall take into account the following factors:

[(A) The extent to which directors or senior executive officers of the savings association knew of, were involved in, the commission of the money laundering offense of which the association was found guilty.

[(B) The extent to which the offense occurred despite the existence of policies and procedures within the savings association which were designed to prevent the occurrence of any such offense.

[(C) The extent to which the savings association has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the association was found guilty.

[(D) The extent to which the savings association has implemented additional internal controls (since the commission of the offense of which the savings association was found guilty) to prevent the occurrence of any other money laundering offense.

[(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

[(3) SUCCESSOR LIABILITY.—This subsection shall not apply to a successor to the interests of, or a person who acquires, a savings association that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

[(4) DEFINITION.—The term "senior executive officer" has the same meaning as in regulations prescribed under section 32(f) of the Federal Deposit Insurance Act.

[SEC. 6. LIQUID ASSET REQUIREMENTS.

[(a) IN GENERAL.—The purpose of this section is to provide a means for creating effective and flexible liquidity in savings associations which can be increased when mortgage money is plentiful, maintained in easily liquidated instruments, and reduced to add to the flow of funds to the mortgage market in periods of credit stringency. More flexible liquidity will help support sound mortgage credit and a more stable supply of such credit.

[(b) MAINTENANCE OF ACCOUNT.—

[(1) IN GENERAL.—Every savings association shall maintain the aggregate amount of its assets of the following types at not less than such amount as, in the opinion of the Director, is appropriate:

[(A cash;

[(B) balances maintained in a Federal reserve bank or passed through a Federal home loan bank or another depository institution to a Federal reserve bank pursuant to the Federal Reserve Act; and

[(C) to such extent as the Director may approve for the purposes of this section—

[(i) time and savings deposits in Federal home loan banks, institutions which are, or are eligible to become, members thereof, and commercial banks;

[(ii) such obligations, including such special obligations, of the United States, a State, any territory or possession of the United States, or a political subdivision, agency, or instrumentality of any one or more of the foregoing, and bankers' acceptances, as the Director may approve;

[(iii) shares or certificates of any open-end management investment company which is registered with the Securities and Exchange Commission under the Investment

Company Act of 1940 and the portfolio of which is restricted by such investment company's investment policy, changeable only if authorized by shareholder vote, solely to any of the obligations or other investments enumerated in subparagraph (A) and in clauses (i), (ii), (iv), (v), (vi), and (vii) of this subparagraph;

[(iv) liquid, highly rated corporate debt obligations with 3 years or less remaining until maturity;

[(v) highly rated commercial paper with 270 days or less remaining until maturity;

[(vi) mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934)—

[(I) that have one year or less remaining until maturity; or

[(II) that are subject to an agreement (including a repurchase agreement, put option, right of redemption, or takeout commitment) that requires another person to purchase the securities within a period that does not exceed one year, and that person is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that is in compliance with applicable capital standards, a primary dealer in United States Government securities, or a broker or dealer registered under the Securities Exchange Act of 1934; and

[(vii) mortgage loans on the security of a first lien on residential real property, if the mortgage loans qualify as backing for mortgage-backed securities issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Association or guaranteed by the Government National Mortgage Association, and either—

[(I) the mortgage loans have one year or less remaining until maturity, or

[(II) the mortgage loans are subject to an agreement (including a repurchase agreement, put option, right of redemption, or takeout commitment) that requires another person to purchase the loans within a period that does not exceed one year, and that person is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that is in compliance with applicable capital standards, a primary dealer in United States Government securities, or a broker or dealer registered under the Securities Exchange Act of 1934.

[(2) LIMITATION.—The requirement prescribed by the Director pursuant to this subsection (hereafter in this section referred to as the "liquidity requirement") may not be less than 4 percent or more than 10 percent of the obligation of the institution on withdrawable accounts and borrowings payable on demand or with unexpired maturities of one year or less. The Director shall prescribe regulations to implement the provisions of this subsection.

[(c) CALCULATION.—The amount of any savings association's liquidity requirement, and any deficiency in compliance therewith, shall be calculated as the Director shall prescribe. The Director may prescribe different liquidity requirements, within the limitations specified herein, for different classes of savings associations, and for such purposes the Director is authorized to classify savings associations according to type, size, location, rate of withdrawals, or on such other basis or bases of differentiation as the Director may deem to be reasonably necessary or appropriate for the purposes of this section.

[(d) DEFICIENCY ASSESSMENTS.—For any deficiency in compliance with the liquidity requirements, the Director may, in the Director's discretion, assess a penalty consisting of the payment by the institution of such sum as may be assessed by the Director but not in excess of a rate equal to the highest rate on Federal home loan bank advances of one year or less, plus 2 percent per year, on the amount of the deficiency for the period with respect to which the deficiency existed. Any penalty assessed under this subsection against a savings association shall be paid to the Director. The Director may authorize or require that, at any time before collection thereof, and whether before or after the bringing of any action or other legal proceeding, the obtaining of any judgment or other recovery, or the issuance or levy of any execution or other legal process therefor, and with or without consideration, any such penalty or recovery be compromised, remitted, or mitigated in whole or part. The penalties authorized under this subsection are in addition to all remedies and sanctions otherwise available.

[(e) REDUCTION OR SUSPENSION.—Whenever the Director deems it advisable in order to enable a savings association to meet withdrawals or to pay obligations, the Director may, to such extent and subject to such conditions as the Director may prescribe, permit the savings association to reduce its liquidity below the minimum amount. Whenever the Director determines that conditions of national emergency or unusual economic stress exist, the Director may suspend any part or all of the liquidity requirements hereunder for such period as the Director may prescribe. Any such suspension, unless sooner terminated by its terms or by the Director, shall terminate at the expiration of 90 days next after its commencement. The preceding sentence does not prevent the Director from again exercising, before, at, or after any such termination, the authority conferred by this subsection.

[(f) REGULATING AUTHORITY.—The Director is authorized to issue such regulations, including definitions of terms used in this section, to make such examinations, and to conduct such investigations as the Director deems necessary or appropriate to effectuate the purposes of this section. The reasonable cost of any such examination or investigation, as determined by the Director, shall be paid by the association.

[SEC. 7. APPLICABILITY.

[The provisions of this Act shall apply to the United States and to Puerto Rico, Guam, and the Virgin Islands.

[SEC. 8. DISTRICT ASSOCIATIONS.

[(a) IN GENERAL.—The Director shall, with respect to all incorporated or unincorporated building, building or loan, building and loan, or homestead associations, and similar institutions, of or transacting or doing business in the District of Columbia, or maintaining any office in the District of Columbia (other than Federal savings associations), have the same powers and functions as to examination, operation, and regulation as the Director has with respect to Federal savings associations.

[(b) ADDITIONAL POWERS.—Any such association or institution incorporated under the laws of, or organized in, the District of Columbia shall have in addition to any existing statutory authority such statutory authority as is vested in Federal savings associations.

[(c) CHARTER AMENDMENTS.—Charters, certificates of incorporation, articles of incorporation, constitutions, bylaws, or other organic documents of associations or institutions referred to in subsection (b) of this section may, without regard to anything contained therein or otherwise, be amended in such manner and to such extent and upon such votes if any as the Director may by regulation or otherwise provide.

[(d) LIMITATION.—Nothing in this section shall cause, or permit the Director to cause, District of Columbia associations to be or become Federal savings associations, or require the Director to impose on District of Columbia associations the same regulations as are imposed on Federal savings associations.

[SEC. 9. EXAMINATION FEES.

[(a) EXAMINATION OF SAVINGS ASSOCIATIONS.—The cost of conducting examinations of savings associations pursuant to section 5(d) shall be assessed by the Director against each such savings association as the Director deems necessary or appropriate.

[(b) EXAMINATION OF AFFILIATES.—The cost of conducting examinations of affiliates of savings associations pursuant to this Act may be assessed by the Director against each affiliate that is examined as the Director deems necessary or appropriate.

[(c) ASSESSMENT AGAINST ASSOCIATION IN CASE OF AFFILIATE'S REFUSAL TO PAY.—

[(1) IN GENERAL.—Subject to paragraph (2), if any affiliate of any savings association—

[(A) refuses to pay any assessment under subsection (b); or

[(B) fails to pay any such assessment before the end of the 60-day period beginning on the date of the assessment,

the Director may assess such cost against, and collect such cost from, such savings association.

[(2) AFFILIATE OF MORE THAN 1 SAVINGS ASSOCIATION.—If any affiliate referred to in paragraph (1) is an affiliate of more than 1 savings association, the assessment with respect to the affiliate against, and collected from, any affiliated savings association in such proportions as the Director may prescribe.

[(d) CIVIL MONEY PENALTY FOR AFFILIATE'S REFUSAL TO COOPERATE.—

[(1) PENALTY IMPOSED.—If any affiliate of any savings association—

[(A) refuses to permit any examiner appointed by the Director to make an examination; or

[(B) refuses to provide any information required to be disclosed in the course of any examination,

the savings association shall forfeit and pay a civil penalty of not more than $5,000 for each day that any such refusal continues.

[(2) ASSESSMENT AND COLLECTION.—Any penalty imposed under paragraph (1) shall be assessed and collected by the Director, in the manner provided in section 8(i)(2) of the Federal Deposit Insurance Act.

[(e) REGULATIONS.—Only the Director may prescribe regulations with respect to—

[(1) the computation of, and the assessment for, the cost of conducting examinations pursuant to this section; and

[(2) the collection and use of such assessments and any fees under this section.

Such regulations may establish formulas to determine a fee or schedule of fees to cover the costs of examinations and also to cover the cost of processing applications, filings, notices, and requests for approvals by the Director or the Director's designee.

[(f) COLLECTION THROUGH FDIC OR FEDERAL HOME LOAN BANKS.—The Corporation or the Federal home loan banks shall, upon request of and by agreement with the Director, collect fees and assessments on behalf of the Director and be reimbursed for the actual cost of collection.

[(g) COSTS OF OTHER EXAMINATIONS.—

[(1) EXAMINATION OF FIDUCIARY ACTIVITIES.—In addition to any assessment imposed pursuant to subsection (a), the cost of conducting examinations of fiduciary activities of savings associations which exercise fiduciary powers (including savings associations or similar institutions in the District of Columbia) shall be assessed by the Director against such savings associations (or similar institutions).

[(2) EXAMINATIONS IN EXCESS OF 2 PER CALENDAR YEAR.—If any savings association or affiliate of a savings association is examined by the Director, or the Corporation, as the case may be, more than 2 times in any calendar year, the cost of conducting such additional examinations shall be assessed, in addition to any assessment imposed pursuant to subsection (a), by the Director or the Corporation, as the case may be, against such savings association or affiliate.

[(h) ADDITIONAL INFORMATION.—Any savings association and any affiliate of any savings association shall provide the Director with access to any information or report with respect to any examination made by any public regulatory authority and furnish any additional information with respect thereto as the Director may require.

[(i) TREATMENT OF EXAMINATION ASSESSMENTS.—

[(1) DEPOSITS.—Amounts received by the Director from assessments under this section (other than an assessment under subsection (d)(2)) or section 10(b)(4) may be deposited in the manner provided in section 5234 of the Revised Statutes with respect to assessments by the Comptroller of the Currency.

[(2) ASSESSMENTS ARE NOT GOVERNMENT FUNDS.—The amounts received by the Director from any assessment under this section shall not be construed to be Government or public funds or appropriated money.

[(3) ASSESSMENTS ARE NOT SUBJECT TO APPORTIONMENT OF FUNDS.—Notwithstanding any other provision of law, the amounts received by the Director from any assessment under this section shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

[(j) PROCESSING FEE.—The Director may, in the Director's sole discretion, assess against any person that submits to the Director an application, filing, notice, or request a fee to cover the cost of processing such submission.

[(k) FEES FOR EXAMINATIONS AND SUPERVISORY ACTIVITIES.—The Director may assess against institutions for which the Director is the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act, fees to fund the direct and indirect expenses of the Office as the Director deems necessary or appropriate. The fees may be imposed more frequently than annually at the discretion of the Director.

[(l) WORKING CAPITAL.—The Director is authorized to impose fees and assessments pursuant to subsections (a), (b), (e), and (k) of this section, in excess of actual expenses for any given year, to permit the Director to maintain a working capital fund. The Director shall remit to the payors of such fees and assessments any funds collected in excess of what he deems necessary to maintain such working capital fund.

[(m) USE OF FUNDS.—The Director is authorized to use the combined resources retained through fees and assessments imposed pursuant to this section to pay all direct and indirect salary and administrative expenses of the Office, including contracts and purchases of property and services, and the direct and indirect expenses of the examinations and supervisory activities of the Office.

[SEC. 10. REGULATION OF HOLDING COMPANIES.

[(a) DEFINITIONS.—

[(1) IN GENERAL.—As used in this section, unless the context otherwise requires—

[(A) SAVINGS ASSOCIATION.—The term "savings association" includes a savings bank or cooperative bank which is deemed by the Director to be a savings association under subsection (l).

[(B) UNINSURED INSTITUTION.—The term "uninsured institution" means any depository institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

[(C) COMPANY.—The term "company" means any corporation, partnership, trust, joint-stock company, or similar organization, but does not include the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, any Federal home loan bank, or any company the majority of the shares of which is owned by the United States or any State, or by an instrumentality of the United States or any State.

[(D) SAVINGS AND LOAN HOLDING COMPANY.—

[(i) IN GENERAL.—Except as provided in clause (ii), the term "savings and loan holding company" means any company that directly or indirectly controls a savings association or that controls any other company that is a savings and loan holding company.

[(ii) EXCLUSION.—The term "savings and loan holding company" does not include a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or to any company directly or indirectly controlled by such company (other than a savings association).

[(E) MULTIPLE SAVINGS AND LOAN HOLDING COMPANY.—The term "multiple savings and loan holding company" means any savings and loan holding company which directly or indirectly controls 2 or more savings associations.

[(F) DIVERSIFIED SAVINGS AND LOAN HOLDING COMPANY.—The term "diversified savings and loan holding company" means any savings and loan holding company whose subsidiary savings association and related activities as permitted under paragraph (2) of subsection (c) of this section represented, on either an actual or a pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year, as determined in accordance with regulations issued by the Director.

[(G) SUBSIDIARY.—The term "subsidiary" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

[(H) AFFILIATE.—The term "affiliate" of a savings association means any person which controls, is controlled by, or is under common control with, such savings association.

[(I) BANK HOLDING COMPANY.—The terms "bank holding company" and "bank" have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956.

[(J) ACQUIRE.—The term "acquire" has the meaning given to such term in section 13(f)(8) of the Federal Deposit Insurance Act.

[(2) CONTROL.—For purposes of this section, a person shall be deemed to have control of—

[(A) a savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

[(B) any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or

appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

[(C) a trust if the person is a trustee thereof; or

[(D) a savings association or any other company if the Director determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.

[(3) EXCLUSIONS.—Notwithstanding any other provision of this subsection, the term "savings and loan holding company" does not include—

[(A) any company by virtue of its ownership or control of voting shares of a savings association or a savings and loan holding company acquired in connection with the underwriting of securities if such shares are held only for such period of time (not exceeding 120 days unless extended by the Director) as will permit the sale thereof on a reasonable basis; and

[(B) any trust (other than a pension, profit-sharing, shareholders', voting, or business trust) which controls a savings association or a savings and loan holding company if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and is (i) in existence on June 26, 1967, or (ii) a testamentary trust created on or after June 26, 1967.

[(4) SPECIAL RULE RELATING TO QUALIFIED STOCK ISSUANCE.—No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if such purchase is approved by the Director under subsection (q)(1)(D), unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

[(b) REGISTRATION AND EXAMINATION.—

[(1) IN GENERAL.—Within 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Director on forms prescribed by the Director, which shall include such information, under oath or otherwise, with respect to the financial condition, ownership, operations, management, and intercompany relationships of such holding company and its subsidiaries, and related matters, as the Director may deem necessary or appropriate to carry out the purposes of this section. Upon application, the Director may extend the time within which a savings and loan

holding company shall register and file the requisite information.

[(2) REPORTS.—Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Director, and the regional office of the Director of the district in which its principal office is located, such reports as may be required by the Director. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Director may prescribe. Each report shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Director may require.

[(3) BOOKS AND RECORDS.—Each savings and loan holding company shall maintain such books and records as may be prescribed by the Director.

[(4) EXAMINATIONS.—Each savings and loan holding company and each subsidiary thereof (other than a bank) shall be subject to such examinations as the Director may prescribe. The cost of such examinations shall be assessed against and paid by such holding company. Examination and other reports may be furnished by the Director to the appropriate State supervisory authority. The Director shall, to the extent deemed feasible, use for the purposes of this subsection reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority.

[(5) AGENT FOR SERVICE OF PROCESS.—The Director may require any savings and loan holding company, or persons connected therewith if it is not a corporation, to execute and file a prescribed form of irrevocable appointment of agent for service of process.

[(6) RELEASE FROM REGISTRATION.—The Director may at any time, upon the Director's own motion or upon application, release a registered savings and loan holding company from any registration theretofore made by such company, if the Director determines that such company no longer has control of any savings association.

[(c) HOLDING COMPANY ACTIVITIES.—

[(1) PROHIBITED ACTIVITIES.—Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary which is not a savings association shall—

[(A) engage in any activity or render any service for or on behalf of a savings association subsidiary for the purpose or with the effect of evading any law or regulation applicable to such savings association;

[(B) commence any business activity, other than the activities described in paragraph (2); or

[(C) continue any business activity, other than the activities described in paragraph (2), after the end of the 2-year period beginning on the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company subject to the limitations contained in this subparagraph.

[(2) EXEMPT ACTIVITIES.—The prohibitions of subparagraphs (B) and (C) of paragraph (1) shall not apply to the following

business activities of any savings and loan holding company or any subsidiary (of such company) which is not a savings association:

[(A) Furnishing or performing management services for a savings association subsidiary of such company.

[(B) Conducting an insurance agency or escrow business.

[(C) Holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company.

[(D) Holding or managing properties used or occupied by a savings association subsidiary of such company.

[(E) Acting as trustee under deed of trust.

[(F) Any other activity—

[(i) which the Board of Governors of the Federal Reserve System, by regulation, has determined to be permissible for bank holding companies under section 4(c) of the Bank Holding Company Act of 1956, unless the Director, by regulation, prohibits or limits any such activity for savings and loan holding companies; or

[(ii) in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.

[(G) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if the purchase of such stock by such savings and loan holding company is approved by the Director pursuant to subsection (q)(1)(D).

[(3) CERTAIN LIMITATIONS ON ACTIVITIES NOT APPLICABLE TO CERTAIN HOLDING COMPANIES.—Notwithstanding paragraphs (4) and (6) of this subsection, the limitations contained in subparagraphs (B) and (C) of paragraph (1) shall not apply to any savings and loan holding company (or any subsidiary of such company) which controls—

[(A) only 1 savings association, if the savings association subsidiary of such company is a qualified thrift lender (as determined under subsection (m)); or

[(B) more than 1 savings association, if—

[(i) all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company or by an individual who would be deemed to control such company if such individual were a company—

[(I) pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act; or

[(II) pursuant to an acquisition in which assistance was continued to a savings association under section 13(i) of the Federal Deposit Insurance Act; and

[(ii) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under subsection (m)).

[(4) PRIOR APPROVAL OF CERTAIN NEW ACTIVITIES REQUIRED.—

[(A) IN GENERAL.—No savings and loan holding company and no subsidiary which is not a savings association shall commence, either de novo or by an acquisition (in whole or in part) of a going concern, any activity described in paragraph (2)(F)(i) of this subsection without the prior approval of the Director.

[(B) FACTORS TO BE CONSIDERED BY DIRECTOR.—In considering any application under subparagraph (A) by any savings and loan holding company or any subsidiary of any such company which is not a savings association, the Director shall consider—

[(i) whether the performance of the activity described in such application by the company or the subsidiary can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects of such activity (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices);

[(ii) the managerial resources of the companies involved; and

[(iii) the adequacy of the financial resources, including capital, of the companies involved.

[(C) DIRECTOR MAY DIFFERENTIATE BETWEEN NEW AND ONGOING ACTIVITIES.—In prescribing any regulation or considering any application under this paragraph, the Director may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern.

[(D) APPROVAL OR DISAPPROVAL BY ORDER.—The approval or disapproval of any application under this paragraph by the Director shall be made in an order issued by the Director containing the reasons for such approval or disapproval.

[(5) GRACE PERIOD TO ACHIEVE COMPLIANCE.—If any savings association referred to in paragraph (3) fails to maintain the status of such association as a qualified thrift lender, the Director may allow, for good cause shown, any company that controls such association (or any subsidiary of such company which is not a savings association) up to 3 years to comply with the limitations contained in paragraph (1)(C).

[(6) SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES AFFECTED BY 1987 AMENDMENTS.—

[(A) EXCEPTION TO 2-YEAR GRACE PERIOD FOR ACHIEVING COMPLIANCE.—Notwithstanding paragraph (1)(C), any company which received approval under subsection (e) of this section to acquire control of a savings association between March 5, 1987, and August 10, 1987, shall not continue any business activity other than an activity described in paragraph (2) after August 10, 1987.

[(B) EXEMPTION FOR ACTIVITIES LAWFULLY ENGAGED IN BEFORE MARCH 5, 1987.—Notwithstanding paragraph (1)(C) and subject to subparagraphs (C) and (D), any savings and

loan holding company which received approval, before March 5, 1987, under subsection (e) of this section to acquire control of a savings association may engage, directly or through any subsidiary (other than a savings association subsidiary of such company), in any activity in which such company or such subsidiary was lawfully engaged on such date.

[(C) TERMINATION OF SUBPARAGRAPH (B) EXEMPTION.—The exemption provided under subparagraph (B) for activities engaged in by any savings and loan holding company or a subsidiary of such company (which is not a savings association) which would otherwise be prohibited under paragraph (1)(C) shall terminate with respect to such activities of such company or subsidiary upon the occurrence (after August 10, 1987) of any of the following:

[(i) The savings and loan holding company acquires control of a bank or an additional savings association (other than a savings association acquired pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act or section 406(f) or 408(m) of the National Housing Act).

[(ii) Any savings association subsidiary of the savings and loan holding company fails to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986.

[(iii) The savings and loan holding company engages in any business activity—

[(I) which is not described in paragraph (2); and

[(II) in which it was not engaged on March 5, 1987.

[(iv) Any savings association subsidiary of the savings and loan holding company increases the number of locations from which such savings association conducts business after March 5, 1987 (other than an increase which occurs in connection with a transaction under section 13 (c) or (k) of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act.

[(v) Any savings association subsidiary of the savings and loan holding company permits any overdraft (including an intraday overdraft), or incurs any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft is the result of an inadvertent computer or accounting error that is beyond the control of both the savings association subsidiary and the affiliate.

[(D) ORDER BY DIRECTOR TO TERMINATE SUBPARAGRAPH (B) ACTIVITY.—Any activity described in subparagraph (B) may also be terminated by the Director, after opportunity for hearing, if the Director determines, having due regard for the purposes of this title, that such action is necessary to prevent conflicts of interest or unsound practices or is in the public interest.

[(7) FOREIGN SAVINGS AND LOAN HOLDING COMPANY.—Notwithstanding any other provision of this section, any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof which is not a savings association), which controls a single savings association on August 10, 1987, shall not be subject to this subsection with respect to any activities of such holding company which are conducted exclusively in a foreign country.

[(8) EXEMPTION FOR BANK HOLDING COMPANIES.—Except for paragraph (1)(A), this subsection shall not apply to any company that is treated as a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956, or any of its subsidiaries.

[(d) TRANSACTIONS WITH AFFILIATES.—Transactions between any subsidiary savings association of a savings and loan holding company and any affiliate (of such savings association subsidiary) shall be subject to the limitations and prohibitions specified in section 11 of this Act.

[(e) ACQUISITIONS.—

[(1) IN GENERAL.—It shall be unlawful for—

[(A) any savings and loan holding company directly or indirectly, or through one or more subsidiaries or through one or more transactions—

[(i) to acquire, except with the prior written approval of the Director, the control of a savings association or a savings and loan holding company, or to retain the control of such an association or holding company acquired or retained in violation of this section as heretofore or hereafter in effect;

[(ii) to acquire, except with the prior written approval of the Director, by the process of merger, consolidation, or purchase of assets, another savings association or a savings and loan holding company, or all or substantially all of the assets of any such association or holding company;

[(iii) to acquire, by purchase or otherwise, or to retain more than 5 percent of the voting shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary, or in the case of a multiple savings and loan holding company (other than a company described in subsection (c)(8)), to so acquire or retain more than 5 percent of the voting shares of any company not a subsidiary which is engaged in any business activity other than the activities specified in subsection (c)(2). This clause shall not apply to shares of a savings association or of a savings and loan holding company—

[(I) held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

[(II) held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

[(III) held in an account solely for trading purposes;

[(IV) over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

[(V) acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Director may permit if the Director determines that such an extension will not be detrimental to the public interest;

[(VI) acquired under section 408(m) of the National Housing Act or section 13(k) of the Federal Deposit Insurance Act;

[(VII) held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (6); or

[(VIII) acquired pursuant to a qualified stock issuance if such purchase is approved by the Director under subsection (q)(1)(D);

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), and (VI)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association or savings and loan holding company; or

[(iv) to acquire the control of an uninsured institution, or to retain for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the Director may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Director finds such extension is warranted and is not detrimental to the public interest; and

[(B) any other company, without the prior written approval of the Director, directly or indirectly, or through one or more subsidiaries or through one or more transactions, to acquire the control of one or more savings associations, except that such approval shall not be required in connection with the control of a savings association, (i) acquired by devise under the terms of a will creating a trust which is excluded from the definition of "savings and loan holding company" under subsection (a) of this section, (ii) acquired in connection with a reorganization in which a person or group of persons, having had control of a savings association for more than 3 years, vests control of that association in a newly formed holding company subject to the control of the same person or group of persons, or (iii) acquired by a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company. The Director shall approve an acquisition of a

savings association under this subparagraph unless the Director finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the association or the insurance risk of the Savings Association Insurance Fund or Bank Insurance Fund, and shall render a decision within 90 days after submission to the Director of the complete record on the application.

Consideration of the managerial resources of a company or savings association under subparagraph (B) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association.

[(2) FACTORS TO BE CONSIDERED.—The Director shall not approve any acquisition under subparagraph (A)(i) or (A)(ii), or of more than one savings association under subparagraph (B) of paragraph (1) of this subsection, any acquisition of stock in connection with a qualified stock issuance, any acquisition under paragraph (4)(A), or any transaction under section 13(k) of the Federal Deposit Insurance Act, except in accordance with this paragraph. In every case, the Director shall take into consideration the financial and managerial resources and future prospects of the company and association involved, the effect of the acquisition on the association, the insurance risk to the Savings Association Insurance Fund or the Bank Insurance Fund [1], and the convenience and needs of the community to be served, and shall render a decision within 90 days after submission to the Director of the complete record on the application. Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association. Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act, the Director shall request from the Attorney General and consider any report rendered within 30 days on the competitive factors involved. The Director shall not approve any proposed acquisition—

[(A) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States,

[(B) the effect of which in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served,

[(C) if the company fails to provide adequate assurances to the Director that the company will make available to the Director such information on the operations or activities of the company, and any affiliate of the company, as

the Director determines to be appropriate to determine and enforce compliance with this Act, or

[(D) in the case of an application involving a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.

[(3) INTERSTATE ACQUISITIONS.—No acquisition shall be approved by the Director under this subsection which will result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling savings associations in more than one State, unless—

[(A) such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional State or States pursuant to section 13(k) of the Federal Deposit Insurance Act;

[(B) such company controls a savings association subsidiary which operated a home or branch office in the additional State or States as of March 5, 1987; or

[(C) the statutes of the State in which the savings association to be acquired is located permit a savings association chartered by such State to be acquired by a savings association chartered by the State where the acquiring savings association or savings and loan holding company is located or by a holding company that controls such a State chartered savings association, and such statutes specifically authorize such an acquisition by language to that effect and not merely by implication.

[(4) ACQUISITIONS BY CERTAIN INDIVIDUALS.—

[(A) IN GENERAL.—Notwithstanding subsection (h)(2), any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, may acquire control of any savings association not a subsidiary of such savings and loan holding company with the prior written approval of the Director.

[(B) TREATMENT OF CERTAIN HOLDING COMPANIES.—If any individual referred to in subparagraph (A) controls more than 1 savings and loan holding company or more than 1 savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in subsection (c) to the same extent such limitations apply to multiple savings and loan holding companies, unless all or all but 1 of the savings associations (including any institution deemed to be a savings association under subsection (1) of this section) controlled directly or indirectly by such individual was acquired pursuant to an acquisition described in subclause (I) or (II) of subsection (c)(3)(B)(i).

[(5) ACQUISITIONS PURSUANT TO CERTAIN SECURITY INTERESTS.—This subsection and subsection (c)(2) of this section do not apply to any savings and loan holding company which ac-

quired the control of a savings association or of a savings and loan holding company pursuant to a pledge or hypothecation to secure a loan, or in connection with the liquidation of a loan, made in the ordinary course of business. It shall be unlawful for any such company to retain such control for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the Director may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Director finds such extension is warranted and would not be detrimental to the public interest.

[(6) SHARES HELD BY INSURANCE AFFILIATES.—Shares described in clause (iii)(VII) of paragraph (1)(A) shall not be excluded for purposes of clause (iii) of such paragraph if—

[(A) all shares held under such clause (iii)(VII) by all insurance company affiliates of such savings association or savings and loan holding company in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company; or

[(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

[(f) DECLARATION OF DIVIDEND.—Every subsidiary savings association of a savings and loan holding company shall give the Director not less than 30 days' advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Such notice period shall commence to run from the date of receipt of such notice by the Director. Any such dividend declared within such period, or without the giving of such notice to the Director, shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

[(g) ADMINISTRATION AND ENFORCEMENT.—

[(1) IN GENERAL.—The Director is authorized to issue such regulations and orders as the Director deems necessary or appropriate to enable the Director to administer and carry out the purposes of this section, and to require compliance therewith and prevent evasions thereof.

[(2) INVESTIGATIONS.—The Director may make such investigations as the Director deems necessary or appropriate to determine whether the provisions of this section, and regulations and orders thereunder, are being and have been complied with by savings and loan holding companies and subsidiaries and affiliates thereof. For the purpose of any investigation under this section, the Director may administer oaths and affirmations, issue subpenas, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which may be relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in any State. The Director may apply to the United States district court for the judicial district (or the United States court in any territory) in which any witness or company subpenaed resides or carries on business, for enforcement of any subpena issued pursuant to

this paragraph, and such courts shall have jurisdiction and power to order and require compliance.

[(3) PROCEEDINGS.—(A) In any proceeding under subsection (a)(2)(D) or under paragraph (5) of this section, the Director may administer oaths and affirmations, take or cause to be taken depositions, and issue subpenas. The Director may make regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to such proceedings may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

[(B) Any hearing provided for in subsection (a)(2)(D) or under paragraph (5) of this section shall be held in the Federal judicial district or in the territory in which the principal office of the association or other company is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code.

[(4) INJUNCTIONS.—Whenever it appears to the Director that any person is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this section or of any regulation or order thereunder, the Director may bring an action in the proper United States district court, or the United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, to enforce compliance with this section or any regulation or order, or to require the divestiture of any acquisition in violation of this section, or for any combination of the foregoing, and such courts shall have jurisdiction of such actions. Upon a proper showing an injunction, decree, restraining order, order of divestiture, or other appropriate order shall be granted without bond.

[(5) CEASE AND DESIST ORDERS.—(A) Notwithstanding any other provision of this section, the Director may, whenever the Director has reasonable cause to believe that the continuation by a savings and loan holding company of any activity or of ownership or control of any of its noninsured subsidiaries constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary savings association and is inconsistent with the sound operation of a savings association or with the purposes of this section or section 8 of the Federal Deposit Insurance Act, order the savings and loan holding company or any of its subsidiaries, after due notice and opportunity for hearing, to terminate such ac-

tivities or to terminate (within 120 days or such longer period as the Director directs in unusual circumstances) its ownership or control of any such noninsured subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the savings and loan holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing savings and loan holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

[(B) The Director may in the Director's discretion apply to the United States district court within the jurisdiction of which the principal office of the company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith. Except as provided in subsection (j), no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

[(h) PROHIBITED ACTS.—It shall be unlawful for—

[(1) any savings and loan holding company or subsidiary thereof, or any director, officer, employee, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares, of such holding company or subsidiary, to hold, solicit, or exercise any proxies in respect of any voting rights in a savings association which is a mutual association;

[(2) any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, to acquire control of any savings association not a subsidiary of such savings and loan holding company, unless such acquisition is approved by the Director pursuant to subsection (e)(4); or

[(3) any individual, except with the prior approval of the Director, to serve or act as a director, officer, or trustee of, or become a partner in, any savings and loan holding company after having been convicted of any criminal offense involving dishonesty or breach of trust.

[(i) PENALTIES.—

[(1) CRIMINAL PENALTY.—(A) Whoever knowingly violates any provision of this section or being a company, violates any regulation or order issued by the Director under this section, shall be imprisoned not more than 1 year, fined not more than $100,000 per day for each day during which the violation continues, or both.

[(B) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this section shall be fined not more than $1,000,000 per day for each day during which the violation continues, imprisoned not more than 5 years, or both.

[(2) CIVIL MONEY PENALTY.—

[(A) PENALTY.—Any company which violates, and any person who participates in a violation of, any provision of

this section, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

[(B) ASSESSMENT.—Any penalty imposed under subparagraph (A) may be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

[(C) HEARING.—The company or other person against whom any civil penalty is assessed under this paragraph shall be afforded a hearing if such company or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this paragraph.

[(D) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

[(E) VIOLATE DEFINED.—For purposes of this section, the term "violate" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

[(F) REGULATIONS.—The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

[(3) CIVIL MONEY PENALTY.—

[(A) PENALTY.—Any company which violates, and any person who participates in a violation of, any provision of this section, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

[(B) ASSESSMENT; ETC.—Any penalty imposed under subparagraph (A) may be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

[(C) HEARING.—The company or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such company or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this paragraph.

[(D) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

[(E) VIOLATE DEFINED.—For purposes of this section, the term "violate" includes any action (alone or with another

or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

[(F) REGULATIONS.—The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

[(5) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a savings and loan holding company or subsidiary thereof (including a separation caused by the deregistration of such a company or such a subsidiary) shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company or its subsidiary (whether such date occurs before, on, or after the date of the enactment of this paragraph).

[(j) JUDICIAL REVIEW.—Any party aggrieved by an order of the Director under this section may obtain a review of such order by filing in the court of appeals of the United States for the circuit in which the principal office of such party is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28, United States Code.

[(k) SAVINGS CLAUSE.—Nothing contained in this section, other than any transaction approved under subsection (e)(2) of this section or section 13 of the Federal Deposit Insurance Act, shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any act, action, or conduct in violation of the antitrust laws.

[(l) TREATMENT OF FDIC INSURED STATE SAVINGS BANKS AND COOPERATIVE BANKS AS SAVINGS ASSOCIATIONS.—

[(1) IN GENERAL.—Notwithstanding any other provision of law, a savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) and a cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) upon application shall be deemed to be a savings association for the purpose of this section, if the Director

determines that such bank is a qualified thrift lender (as determined under subsection (m)).

[(2) FAILURE TO MAINTAIN QUALIFIED THRIFT LENDER STATUS.—If any savings bank which is deemed to be a savings association under paragraph (1) subsequently fails to maintain its status as a qualified thrift lender, as determined by the Director, such bank may not thereafter be a qualified thrift lender for a period of 5 years.

[(m) QUALIFIED THRIFT LENDER TEST.—

[(1) IN GENERAL.—Except as provided in paragraphs (2) and (7), any savings association is a qualified thrift lender if—

[(A) the savings association qualifies as a domestic building and loan association, as such term is defined in section 7701(a)(19) of the Internal Revenue Code of 1986; or

[(B)(i) the savings association's qualified thrift investments equal or exceed 65 percent of the savings association's portfolio assets; and

[(ii) the savings association's qualified thrift investments continue to equal or exceed 65 percent of the savings association's portfolio assets on a monthly average basis in 9 out of every 12 months.

[(2) EXCEPTIONS GRANTED BY DIRECTOR.—Notwithstanding paragraph (1), the Director may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in such paragraph as the Director deems necessary if—

[(A) the Director determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or

[(B) the Director determines that—

[(i) the grant of any such exception will significantly facilitate an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act;

[(ii) the acquired association will comply with the transition requirements of paragraph (7)(B), as if the date of the exemption were the starting date for the transition period described in that paragraph; and

[(iii) the Director determines that the exemption will not have an undue adverse effect on competing savings associations in the relevant market and will further the purposes of this subsection.

[(3) FAILURE TO BECOME AND REMAIN A QUALIFIED THRIFT LENDER.—

[(A) IN GENERAL.—A savings association that fails to become or remain a qualified thrift lender shall either become one or more banks (other than a savings bank) or be subject to subparagraph (B), except as provided in subparagraph (D).

[(B) RESTRICTIONS APPLICABLE TO SAVINGS ASSOCIATIONS THAT ARE NOT QUALIFIED THRIFT LENDERS.—

[(i) RESTRICTIONS EFFECTIVE IMMEDIATELY.—The following restrictions shall apply to a savings association beginning on the date on which the savings association should have become or ceases to be a qualified thrift lender:

[(I) ACTIVITIES.—The savings association shall not make any new investment (including an investment in a subsidiary) or engage, directly or indirectly, in any other new activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

[(II) BRANCHING.—The savings association shall not establish any new branch office at any location at which a national bank located in the savings association's home State may not establish a branch office. For purposes of this subclause, a savings association's home State is the State in which the savings association's total deposits were largest on the date on which the savings association should have become or ceased to be a qualified thrift lender.

[(III) ADVANCES.—The savings association shall not be eligible to obtain new advances from any Federal home loan bank.

[(IV) DIVIDENDS.—The savings association shall be subject to all statutes and regulations governing the payment of dividends by a national bank in the same manner and to the same extent as if the savings association were a national bank.

[(ii) ADDITIONAL RESTRICTIONS EFFECTIVE AFTER THREE YEARS.—The following additional restrictions shall apply to a savings association beginning 3 years after the date on which the savings association should have become or ceases to be a qualified thrift lender:

[(I) ACTIVITIES.—The savings association shall not retain any investment (including an investment in any subsidiary) or engage, directly or indirectly, in any activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

[(II) ADVANCES.—The savings association shall repay any outstanding advances from any Federal home loan bank as promptly as can be prudently done consistent with the safe and sound operation of the savings association.

[(C) HOLDING COMPANY REGULATION.—Any company that controls a savings association that is subject to any provision of subparagraph (B) shall, within one year after the date on which the savings association should have become or ceases to be a qualified thrift lender, register as

and be deemed to be a bank holding company subject to all of the provisions of the Bank Holding Company Act of 1956, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies, in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act of 1956.

[(D) REQUALIFICATION.—A savings association that should have become or ceases to be a qualified thrift lender shall not be subject to subparagraph (B) or (C) if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement in paragraph (1) on a monthly average basis in 9 out of the preceding 12 months and remains a qualified thrift lender. If the savings association (or any savings association that acquired all or substantially all of its assets from that savings association) at any time thereafter ceases to be a qualified thrift lender, it shall immediately be subject to all provisions of subparagraphs (B) and (C) as if all the periods described in subparagraphs (B)(ii) and (C) had expired.

[(E) DEPOSIT INSURANCE ASSESSMENTS.—Any bank chartered as a result of the requirements of this section shall be obligated until December 31, 1993, to pay to the Savings Association Insurance Fund the assessments assessed on savings associations under the Federal Deposit Insurance Act. Such association shall also be assessed, on the date of its change of status from a Savings Association Insurance Fund member, the exit fee and entrance fee provided in section 5(d) of the Federal Deposit Insurance Act. Such institution shall not be obligated to pay the assessments assessed on banks under the Federal Deposit Insurance Act until—

[(i) December 31, 1993, or

[(ii) the institution's change of status from a Savings Association Insurance Fund member to a Bank Insurance Fund member,

whichever is later.

[(F) EXEMPTION FOR SPECIALIZED SAVINGS ASSOCIATIONS SERVING CERTAIN MILITARY PERSONNEL.—Subparagraph (A) shall not apply to a savings association subsidiary of a savings and loan holding company if at least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former members in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such members.

[(G) EXEMPTION FOR CERTAIN FEDERAL SAVINGS ASSOCIATIONS.—This paragraph shall not apply to any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

[(i) that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law; or

[(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

[(H) NO CIRCUMVENTION OF EXIT MORATORIUM.—Subparagraph (A) of this paragraph shall not be construed as permitting any insured depository institution to engage in any conversion transaction prohibited under section 5(d) of the Federal Deposit Insurance Act.

[(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

[(A) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term "actual thrift investment percentage" means the percentage determined by dividing—

[(i) the amount of a savings association's qualified thrift investments, by

[(ii) the amount of the savings association's portfolio assets.

[(B) PORTFOLIO ASSETS.—The term "portfolio assets" means, with respect to any savings association, the total assets of the savings association, minus the sum of—

[(i) goodwill and other intangible assets;

[(ii) the value of property used by the savings association to conduct its business; and

[(iii) liquid assets of the type required to be maintained under section 6 of the Home Owners' Loan Act, in an amount not exceeding the amount equal to 20 percent of the savings association's total assets.

[(C) QUALIFIED THRIFT INVESTMENTS.—

[(i) IN GENERAL.—The term "qualified thrift investments" means, with respect to any savings association, the assets of the savings association that are described in clauses (ii) and (iii).

[(ii) ASSETS INCLUDIBLE WITHOUT LIMIT.—The following assets are described in this clause for purposes of clause (i):

[(I) The aggregate amount of loans held by the savings association that were made to purchase, refinance, construct, improve, or repair domestic residential housing or manufactured housing.

[(II) Home-equity loans.

[(III) Securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing.

[(IV) EXISTING OBLIGATIONS OF DEPOSIT INSURANCE AGENCIES.—Direct or indirect obligations of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation issued in accordance with the terms of agreements entered into prior to July 1, 1989, for the 10-year period beginning on the date of issuance of such obligations.

[(V) NEW OBLIGATIONS OF DEPOSIT INSURANCE AGENCIES.—Obligations of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the FSLIC Resolution Fund, and the Resolution Trust Corporation issued in accordance with the terms of agreements entered into on or after July 1, 1989, for the 5-year period beginning on the date of issuance of such obligations.

[(VI) Shares of stock issued by any Federal home loan bank.

[(VII) Loans for educational purposes, loans to small businesses, and loans made through credit cards or credit card accounts.

[(iii) ASSETS INCLUDIBLE SUBJECT TO PERCENTAGE RESTRICTION.—The following assets are described in this clause for purposes of clause (i):

[(I) 50 percent of the dollar amount of the residential mortgage loans originated by such savings association and sold within 90 days of origination.

[(II) Investments in the capital stock or obligations of, and any other security issued by, any service corporation if such service corporation derives at least 80 percent of its annual gross revenues from activities directly related to purchasing, refinancing, constructing, improving, or repairing domestic residential real estate or manufactured housing.

[(III) 200 percent of the dollar amount of loans and investments made to acquire, develop, and construct 1- to 4-family residences the purchase price of which is or is guaranteed to be not greater than 60 percent of the median value of comparable newly constructed 1- to 4-family residences within the local community in which such real estate is located, except that not more than 25 percent of the amount included under this subclause may consist of commercial properties related to the development if those properties are directly related to providing services to residents of the development.

[(IV) 200 percent of the dollar amount of loans for the acquisition or improvement of residential real property, churches, schools, and nursing homes located within, and loans for any other purpose to any small businesses located within any area which has been identified by the Director, in connection with any review or examination of community reinvestment practices, as a geographic area or neighborhood in which the credit needs of the low- and moderate-income residents of such area or neighborhood are not being adequately met.

[(V) Loans for the purchase or construction of churches, schools, nursing homes, and hospitals, other than those qualifying under clause (IV), and loans for the improvement and upkeep of such properties.

[(VI) Loans for personal, family, or household purposes (other than loans for personal, family, or household purposes described in clause (ii)(VII)).

[(VII) Shares of stock issued by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

[(iv) PERCENTAGE RESTRICTION APPLICABLE TO CERTAIN ASSETS.—The aggregate amount of the assets described in clause (iii) which may be taken into account in determining the amount of the qualified thrift investments of any savings association shall not exceed the amount which is equal to 20 percent of a savings association's portfolio assets.

[(v) The term "qualified thrift investments" excludes—

[(I) except for home equity loans, that portion of any loan or investment that is used for any purpose other than those expressly qualifying under any subparagraph of clause (ii) or (iii); or

[(II) goodwill or any other intangible asset.

[(D) CREDIT CARD.—The Director shall issue such regulations as may be necessary to define the term "credit card".

[(E) SMALL BUSINESS.—The Director shall issue such regulations as may be necessary to define the term "small business".

[(5) CONSISTENT ACCOUNTING REQUIRED.—

[(A) In determining the amount of a savings association's portfolio assets, the assets of any subsidiary of the savings association shall be consolidated with the assets of the savings association if—

[(i) Assets of the subsidiary are consolidated with the assets of the savings association in determining the savings association's qualified thrift investments; or

[(ii) Residential mortgage loans originated by the subsidiary are included pursuant to paragraph (4)(C)(iii)(I) in determining the savings association's qualified thrift investments.

[(B) In determining the amount of a savings association's portfolio assets and qualified thrift investments, consistent accounting principles shall be applied.

[(6) SPECIAL RULES FOR PUERTO RICO AND VIRGIN ISLANDS SAVINGS ASSOCIATIONS.—

[(A) PUERTO RICO SAVINGS ASSOCIATIONS.—With respect to any savings association headquartered and operating primarily in Puerto Rico—

[(i) the term "qualified thrift investments" includes, in addition to the items specified in paragraph (4)—

[(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Commonwealth of Puerto Rico; and

[(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses, located within the Commonwealth of Puerto Rico; and

[(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate—

[(I) which is located within the Commonwealth of Puerto Rico; and

[(II) the value of which (at the time of acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Commonwealth of Puerto Rico, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled.

[(B) VIRGIN ISLANDS SAVINGS ASSOCIATIONS.—With respect to any savings association headquartered and operating primarily in the Virgin Islands—

[(i) the term "qualified thrift investments" includes, in addition to the items specified in paragraph (4)—

[(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Virgin Islands; and

[(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses, located within the Virgin Islands; and

[(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate—

[(I) which is located within the Virgin Islands; and

[(II) the value of which (at the time of acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Virgin Islands, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled.

[(7) TRANSITIONAL RULE FOR CERTAIN SAVINGS ASSOCIATIONS.—

[(A) IN GENERAL.—If any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

[(i) that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982; or

[(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law,

meets the requirements of subparagraph (B), such savings association shall be treated as a qualified thrift lender during period ending on September 30, 1995.

[(B) SUBPARAGRAPH (B) REQUIREMENTS.—A savings association meets the requirements of this subparagraph if, in the determination of the Director—

[(i) the actual thrift investment percentage of such association does not, after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, decrease below the actual thrift investment percentage of such association on July 15, 1989; and

[(ii) the amount by which—

[(I) the actual thrift investment percentage of such association at the end of each period described in the following table, exceeds

[(II) the actual thrift investment percentage of such association on July 15, 1989,

is equal to or greater than the applicable percentage (as determined under the following table) of the amount by which 70 percent exceeds the actual thrift investment percentage of such association on such date of enactment:

[For the following period:	The applicable percentage is:
July 1, 1991–September 30, 1992	25 percent
October 1, 1992–March 31, 1994	50 percent
April 1, 1994–September 30, 1995	75 percent
Thereafter	100 percent

[(C) For purposes of this paragraph, the actual thrift investment percentage of an association on July 15, 1989, shall be determined by applying the definition of "actual thrift investment percentage" that takes effect on July 1, 1991.

[(n) TYING RESTRICTIONS.—A savings and loan holding company and any of its affiliates shall be subject to section 5(q) and regulations prescribed under such section, in connection with transactions involving the products or services of such company or affiliate and those of an affiliated savings association as if such company or affiliate were a savings association.

[(o) MUTUAL HOLDING COMPANIES.—

[(1) IN GENERAL.—A savings association operating in mutual form may reorganize so as to become a holding company by—

[(A) chartering an interim savings association, the stock of which is to be wholly owned, except as otherwise provided in this section, by the mutual association; and

[(B) transferring the substantial part of its assets and liabilities, including all of its insured liabilities, to the interim savings association.

[(2) DIRECTORS AND CERTAIN ACCOUNT HOLDERS' APPROVAL OF PLAN REQUIRED.—A reorganization is not authorized under this subsection unless—

[(A) a plan providing for such reorganization has been approved by a majority of the board of directors of the mutual savings association; and

[(B) in the case of an association in which holders of accounts and obligors exercise voting rights, such plan has been submitted to and approved by a majority of such individuals at a meeting held at the call of the directors in accordance with the procedures prescribed by the association's charter and bylaws.

[(3) NOTICE TO THE DIRECTOR; DISAPPROVAL PERIOD.—

[(A) NOTICE REQUIRED.—At least 60 days prior to taking any action described in paragraph (1), a savings association seeking to establish a mutual holding company shall provide written notice to the Director. The notice shall contain such relevant information as the Director shall require by regulation or by specific request in connection with any particular notice.

[(B) TRANSACTION ALLOWED IF NOT DISAPPROVED.—Unless the Director within such 60-day notice period disapproves the proposed holding company formation, or extends for another 30 days the period during which such disapproval may be issued, the savings association providing such notice may proceed with the transaction, if the requirements of paragraph (2) have been met.

[(C) GROUNDS FOR DISAPPROVAL.—The Director may disapprove any proposed holding company formation only if—

[(i) such disapproval is necessary to prevent unsafe or unsound practices;

[(ii) the financial or management resources of the savings association involved warrant disapproval;

[(iii) the savings association fails to furnish the information required under subparagraph (A); or

[(iv) the savings association fails to comply with the requirement of paragraph (2).

[(D) RETENTION OF CAPITAL ASSETS.—In connection with the transaction described in paragraph (1), a savings association may, subject to the approval of the Director, retain capital assets at the holding company level to the extent that such capital exceeds the association's capital requirement established by the Director pursuant to sections 5 (s) and (t) of this Act.

[(4) OWNERSHIP.—

[(A) IN GENERAL.—Persons having ownership rights in the mutual association pursuant to section 5(b)(1)(B) of this Act or State law shall have the same ownership rights with respect to the mutual holding company.

[(B) HOLDERS OF CERTAIN ACCOUNTS.—Holders of savings, demand or other accounts of—

[(i) a savings association chartered as part of a transaction described in paragraph (1); or

[(ii) a mutual savings association acquired pursuant to paragraph (5)(B),

shall have the same ownership rights with respect to the mutual holding company as persons described in subparagraph (A) of this paragraph.

[(5) PERMITTED ACTIVITIES.—A mutual holding company may engage only in the following activities:

[(A) Investing in the stock of a savings association.

[(B) Acquiring a mutual association through the merger of such association into a savings association subsidiary of such holding company or an interim savings association subsidiary of such holding company.

[(C) Subject to paragraph (6), merging with or acquiring another holding company, one of whose subsidiaries is a savings association.

[(D) Investing in a corporation the capital stock of which is available for purchase by a savings association under Federal law or under the law of any State where the subsidiary savings association or associations have their home offices.

[(E) Engaging in the activities described in subsection (c)(2), except subparagraph (B).

[(6) LIMITATIONS ON CERTAIN ACTIVITIES OF ACQUIRED HOLDING COMPANIES.—

[(A) NEW ACTIVITIES.—If a mutual holding company acquires or merges with another holding company under paragraph (5)(C), the holding company acquired or the holding company resulting from such merger or acquisition may only invest in assets and engage in activities which are authorized under paragraph (5).

[(B) GRACE PERIOD FOR DIVESTING PROHIBITED ASSETS OR DISCONTINUING PROHIBITED ACTIVITIES.—Not later than 2 years following a merger or acquisition described in paragraph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall—

[(i) dispose of any asset which is an asset in which a mutual holding company may not invest under paragraph (5); and

[(ii) cease any activity which is an activity in which a mutual holding company may not engage under paragraph (5).

[(7) REGULATION.—A mutual holding company shall be chartered by the Director and shall be subject to such regulations as the Director may prescribe. Unless the context otherwise requires, a mutual holding company shall be subject to the other requirements of this section regarding regulation of holding companies.

[(8) CAPITAL IMPROVEMENT.—

[(A) PLEDGE OF STOCK OF SAVINGS ASSOCIATION SUBSIDIARY.—This section shall not prohibit a mutual holding company from pledging all or a portion of the stock of a

savings association chartered as part of a transaction described in paragraph (1) to raise capital for such savings association.

[(B) ISSUANCE OF NONVOTING SHARES.—This section shall not prohibit a savings association chartered as part of a transaction described in paragraph (1) from issuing any nonvoting shares or less than 50 percent of the voting shares of such association to any person other than the mutual holding company.

[(9) INSOLVENCY AND LIQUIDATION.—

[(A) IN GENERAL.—Notwithstanding any provision of law, upon—

[(i) the default of any savings association—

[(I) the stock of which is owned by any mutual holding company; and

[(II) which was chartered in a transaction described in paragraph (1);

[(ii) the default of a mutual holding company; or

[(iii) a foreclosure on a pledge by a mutual holding company described in paragraph (8)(A),

a trustee shall be appointed receiver of such mutual holding company and such trustee shall have the authority to liquidate the assets of, and satisfy the liabilities of, such mutual holding company pursuant to title 11, United States Code.

[(B) DISTRIBUTION OF NET PROCEEDS.—Except as provided in subparagraph (C), the net proceeds of any liquidation of any mutual holding company pursuant to subparagraph (A) shall be transferred to persons who hold ownership interests in such mutual holding company.

[(C) RECOVERY BY CORPORATION.—If the Corporation incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company which is liquidated pursuant to subparagraph (A), the Corporation shall succeed to the ownership interests of the depositors of such savings association in the mutual holding company, to the extent of the Corporation's loss.

[(10) DEFINITIONS.—For purposes of this subsection—

[(A) MUTUAL HOLDING COMPANY.—The term "mutual holding company" means a corporation organized as a holding company under this subsection.

[(B) MUTUAL ASSOCIATION.—The term "mutual association" means a savings association which is operating in mutual form.

[(C) DEFAULT.—The term "default" means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed.

[(p) HOLDING COMPANY ACTIVITIES CONSTITUTING SERIOUS RISK TO SUBSIDIARY SAVINGS ASSOCIATION.—

[(1) DETERMINATION AND IMPOSITION OF RESTRICTIONS.—If the Director determines that there is reasonable cause to believe that the continuation by a savings and loan holding company of any activity constitutes a serious risk to the financial

safety, soundness, or stability of a savings and loan holding company's subsidiary savings association, the Director may impose such restrictions as the Director determines to be necessary to address such risk. Such restrictions shall be issued in the form of a directive to the holding company and any of its subsidiaries, limiting—

[(A) the payment of dividends by the savings association;

[(B) transactions between the savings association, the holding company, and the subsidiaries or affiliates of either; and

[(C) any activities of the savings association that might create a serious risk that the liabilities of the holding company and its other affiliates may be imposed on the savings association.

Such directive shall be effective as a cease and desist order that has become final.

[(2) REVIEW OF DIRECTIVE.—

[(A) ADMINISTRATIVE REVIEW.—After a directive referred to in paragraph (1) is issued, the savings and loan holding company, or any subsidiary of such holding company subject to the directive, may object and present in writing its reasons why the directive should be modified or rescinded. Unless within 10 days after receipt of such response the Director affirms, modifies, or rescinds the directive, such directive shall automatically lapse.

[(B) JUDICIAL REVIEW.—If the Director affirms or modifies a directive pursuant to subparagraph (A), any affected party may immediately thereafter petition the United States district court for the district in which the savings and loan holding company has its main office or in the United States District Court for the District of Columbia to stay, modify, terminate or set aside the directive. Upon a showing of extraordinary cause, the savings and loan holding company, or any subsidiary of such holding company subject to a directive, may petition a United States district court for relief without first pursuing or exhausting the administrative remedies set forth in this paragraph.

[(q) QUALIFIED STOCK ISSUANCE BY UNDERCAPITALIZED SAVINGS ASSOCIATIONS OR HOLDING COMPANIES.—

[(1) IN GENERAL.—For purposes of this section, any issue of shares of stock shall be treated as a qualified stock issuance if the following conditions are met:

[(A) The shares of stock are issued by—

[(i) an undercapitalized savings association; or

[(ii) a savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds from the issuance of such stock to the capital of an undercapitalized savings association subsidiary of such holding company.

[(B) All shares of stock issued consist of previously unissued stock or treasury shares.

[(C) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Director in accordance with the provisions of subsection (b)(1) of this section.

[(D) Subject to paragraph (2), the Director approved the purchase of the shares of stock by the acquiring savings and loan holding company.

[(E) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

[(F) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to subsection (c) or (k) of section 13 of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

[(G) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

[(H) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

[(I) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11.

[(2) APPROVAL OF ACQUISITIONS.—

[(A) ADDITIONAL CAPITAL COMMITMENTS NOT REQUIRED.—The Director shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Director or any other Federal agency having jurisdiction.

[(B) OTHER CONDITIONS.—Notwithstanding subsection (a)(4), the Director may impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Director determines to be appropriate, including—

[(i) a requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Director may require; and

[(ii) such other conditions as the Director deems necessary or appropriate to prevent evasions of this section.

[(C) APPLICATION DEEMED APPROVED IF NOT DISAPPROVED WITHIN 90 DAYS.—An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Director if such application has not been disapproved by the Director before the end of the 90-day period beginning on the date such application has been deemed sufficient under regulations issued by the Director.

[(3) NO LIMITATION ON CLASS OF STOCK ISSUED.—The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

[(4) UNDERCAPITALIZED SAVINGS ASSOCIATION DEFINED.—For purposes of this subsection, the term "undercapitalized savings association" means any savings association—

[(A) the assets of which exceed the liabilities of such association; and

[(B) which does not comply with one or more of the capital standards in effect under section 5(t).

[(r) PENALTY FOR FAILURE TO PROVIDE TIMELY AND ACCURATE REPORTS.—

[(1) FIRST TIER.—Any savings and loan holding company, and any subsidiary of such holding company, which—

[(A) maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error—

[(i) fails to submit or publish any report or information required under this section or regulations prescribed by the Director, within the period of time specified by the Director; or

[(ii) submits or publishes any false or misleading report or information; or

[(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such holding company or subsidiary shall have the burden of proving by a preponderence of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

[(2) SECOND TIER.—Any savings and loan holding company, and any subsidiary of such holding company, which—

[(A) fails to submit or publish any report or information required under this section or under regulations prescribed by the Director, within the period of time specified by the Director; or

[(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which

such failure continues or such false or misleading information is not corrected.

[(3) THIRD TIER.—If any savings and loan holding company or any subsidiary of such a holding company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Director may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such company or subsidiary, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

[(4) ASSESSMENT.—Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

[(5) HEARING.—Any savings and loan holding company or any subsidiary of such a holding company against which any penalty is assessed under this subsection shall be afforded a hearing if such savings and loan holding company or such subsidiary, as the case may be, submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

[(s) MERGERS, CONSOLIDATIONS, AND OTHER ACQUISITIONS AUTHORIZED.—

[(1) IN GENERAL.—Subject to sections 5(d)(3) and 18(c) of the Federal Deposit Insurance Act and all other applicable laws, any Federal savings association may acquire or be acquired by any insured depository institution.

[(2) EXPEDITED APPROVAL OF ACQUISITIONS.—

[(A) IN GENERAL.—Any application by a savings association to acquire or be acquired by another insured depository institution which is required to be filed with the Director under any applicable law or regulation shall be approved or disapproved in writing by the Director before the end of the 60-day period beginning on the date such application is filed with the agency.

[(B) EXTENSION OF PERIOD.—The period for approval or disapproval referred to in subparagraph (A) may be extended for an additional 30-day period if the Director determines that—

[(i) an applicant has not furnished all of the information required to be submitted; or

[(ii) in the Director's judgment, any material information submitted is substantially inaccurate or incomplete.

[(3) ACQUIRE DEFINED.—For purposes of this subsection, the term "acquire" means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring in-

sured depository institution may not own the shares of the acquired insured depository institution.

[(4) REGULATIONS.—

[(A) REQUIRED.—The Director shall prescribe such regulations as may be necessary to carry out paragraph (1).

[(B) EFFECTIVE DATE.—The regulations required under subparagraph (A) shall—

[(i) be prescribed in final form before the end of the 90-day period beginning on the date of the enactment of this subsection; and

[(ii) take effect before the end of the 120-day period beginning on such date.

[(5) LIMITATION.—No provision of this section shall be construed to authorize a national bank or any subsidiary thereof to engage in any activity not otherwise authorized under the National Bank Act or any other law governing the powers of a national bank.

[(t) EXEMPTION FOR BANK HOLDING COMPANIES.—This section shall not apply to a bank holding company that is subject to the Bank Holding Company Act of 1956, or any company controlled by such bank holding company.

[SEC. 11. TRANSACTIONS WITH AFFILIATES; EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.

[(a) AFFILIATE TRANSACTIONS.—

[(1) IN GENERAL.—Sections 23A and 23B of the Federal Reserve Act shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank (as defined in such Act), except that—

[(A) no loan or other extension of credit may be made to any affiliate unless that affiliate is engaged only in activities described in section 10(c)(2)(F)(i); and

[(B) no savings association may enter into any transaction described in section 23A(b)(7)(B) of the Federal Reserve Act with any affiliate other than with respect to shares of a subsidiary.

[(2) SISTER BANK EXEMPTION MADE AVAILABLE TO SAVINGS ASSOCIATIONS.—

[(A) SAVINGS ASSOCIATIONS CONTROLLED BY BANK HOLDING COMPANIES.—Every savings association more than 80 percent of the voting stock of which is owned by a company described in section 10(c)(8) shall be treated as a bank for purposes of section 23A(d)(1) and section 23B of the Federal Reserve Act, if every savings association and bank controlled by such company complies with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill.

[(B) SAVINGS ASSOCIATIONS GENERALLY.—Effective on and after January 1, 1995, every savings association shall be treated as a bank for purposes of section 23A(d)(1) and section 23B of the Federal Reserve Act.

[(3) AFFILIATES DESCRIBED.—Any company that would be an affiliate (as defined in sections 23A and 23B of the Federal Reserve Act) of any savings association if such savings associa-

tion were a member bank (as such term is defined in such Act) shall be deemed to be an affiliate of such savings association for purposes of paragraph (1).

[(4) ADDITIONAL RESTRICTIONS AUTHORIZED.—The Director may impose such additional restrictions on any transaction between any savings association and any affiliate of such savings association as the Director determines to be necessary to protect the safety and soundness of the savings association.

[(b) EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—

[(1) IN GENERAL.—Subsections (g) and (h) of section 22 of the Federal Reserve Act shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank (as defined in such Act).

[(2) ADDITIONAL RESTRICTIONS AUTHORIZED.—The Director may impose such additional restrictions on loans or extensions of credit to any director or executive officer of any savings association, or any person who directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a savings association, as the Director determines to be necessary to protect the safety and soundness of the savings association.

[(c) ADMINISTRATIVE ENFORCEMENT.—The Director may take enforcement action with respect to violations of this section pursuant to section 8 or 18(j) of the Federal Deposit Insurance Act, as appropriate.

[SEC. 12. ADVERTISING.

[No savings association shall carry on any sale, plan, or practices, or any advertising, in violation of regulations promulgated by the Director.

[SEC. 13. POWERS OF EXAMINERS.

[For the purposes of this Act, examiners appointed by the Director shall—

[(1) be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the Federal Reserve Act and title LXII of the Revised Statutes; and

[(2) have, in the exercise of functions under this Act, the same powers and privileges as are vested in such examiners by law.

[SEC. 14. SEPARABILITY PROVISION.

[If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.]

THE ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT OF 1996

TITLE II—ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION

SEC. 2001. SHORT TITLE; TABLE OF CONTENTS; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the "Economic Growth and Regulatory Paperwork Reduction Act of 1996".

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Subtitle B—Streamlining Government Regulation

* * * * * * *

CHAPTER 2—ELIMINATING UNNECESSARY REGULATORY BURDENS

* * * * * * *

SEC. 2227. CREDIT AVAILABILITY ASSESSMENT.

(a) STUDY.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, and once every 60 months thereafter, the Board, in consultation with [the Director of the Office of Thrift Supervision,] the Comptroller of the Currency, the Board of Directors of the Corporation, the Administrator of the National Credit Union Administration, the Administrator of the Small Business Administration, and the Secretary of Commerce, shall conduct a study and submit a report to the Congress detailing the extent of small business lending by all creditors.

* * * * * * *

Subtitle G—Deposit Insurance Funds

* * * * * * *

SEC. 2704. MERGER OF BIF AND SAIF.

(a) * * *

* * * * * * *

[(c) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on January 1, 1999, if no insured depository institution is a savings association on that date.]

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the earlier of—

(1) January 1, 2000; or

(2) the end of the 2-year period beginning on the date of the enactment of the Thrift Charter Transition Act of 1997.

* * * * * * *

FEDERAL HOME LOAN BANK ACT

* * * * * * *

DEFINITIONS

SEC. 2. As used in this Act—

(1) * * *

* * * * * * *

[(9) SAVINGS ASSOCIATION.—The term "savings association" has the meaning given to such term in section 3 of the Federal Deposit Insurance Act.]

[(10)] *(9)* CHAIRPERSON.—The term "Chairperson" means the Chairperson of the Board.

[(11)] *(10)* SECRETARY.—The term "Secretary" means the Secretary of Housing and Urban Development.

[(12)] *(11)* INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" means—

(A) * * *

* * * * * * *

ADVANCES TO MEMBERS

SEC. 10. (a) * * *

* * * * * * *

[(h) SPECIAL LIQUIDITY ADVANCES.—

[(1) IN GENERAL.—Subject to paragraph (2), the Federal Home Loan Banks may, upon the request of the Director of the Office of Thrift Supervision, make short-term liquidity advances to a savings association that—

[(A) is solvent but presents a supervisory concern because of such association's poor financial condition; and

[(B) has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

[(2) INTEREST ON AND SECURITY FOR SPECIAL LIQUIDITY ADVANCES.—Any loan by a Federal Home Loan Bank pursuant to paragraph (1) shall be subject to all applicable collateral requirements, including the requirements of section 10(a) of this Act, and shall be at an interest rate no less favorable than those made available for similar short-term liquidity advances to savings associations that do not present such supervisory concern.]

(h) [Repealed]

* * * * * * *

GENERAL POWERS AND DUTIES OF BANKS

SEC. 11. (a) * * *

* * * * * * *

(e)(1) Each Federal Home Loan Bank shall have power to accept deposits made by members of such bank or by any other Federal Home Loan Bank or other instrumentality of the United States, upon such terms and conditions as the Board may prescribe, but no Federal Home Loan Bank shall transact any banking or other business not incidental to activities authorized by this Act.

(2)(A) * * *

* * * * * * *

(C) The Board is authorized, with respect to participation in the collection and settlement of any items by Federal Home Loan Banks[, and with respect to the collection and settlement (including payment by the payor institution) of items payable by Federal savings and loan associations and Federal mutual savings banks,] to prescribe rules and regulations regarding the rights, powers, responsibilities, duties, and liabilities, including standards relating thereto, of such Federal Home Loan Banks[, associations, or banks] and other parties to any such items or their collection and settlement. In prescribing such rules and regulations, the Board may adopt or apply, in whole or in part, general banking usage and practices, and, in instances or respects in which they would otherwise not be applicable, Federal Reserve regulations and operating letters, the Uniform Commercial Code, and clearinghouse rules.

* * * * * * *

ADMINISTRATIVE EXPENSES

SEC. 18.

(b) * * *

[(c)(1) The Director of the Office of Thrift Supervision, utilizing the services of the Administrator of General Services (hereinafter referred to as the "Administrator"), and subject to any limitation hereon which may hereafter be imposed in appropriation Acts, is hereby authorized—

[(A) to acquire, in the name of the United States, real property in the District of Columbia, for the purposes set forth in this subsection;

[(B) to construct, develop, furnish, and equip such buildings thereon and such facilities as in its judgment may be appropriate to provide, to such extent as the Director of the Office of Thrift Supervision may deem advisable, suitable and adequate quarters and facilities for the Director of the Office of Thrift Supervision and the agencies under its administration or supervision;

[(C) to enlarge, remodel, or reconstruct any of the same; and

[(D) to make or enter into contracts for any of the foregoing.

[(2) The Director of the Office of Thrift Supervision may require of the respective banks, and they shall make to the Director of the Office of Thrift Supervision, such advances of funds for the purposes set out in paragraph (1) as in the sole judgment of the Director of the Office of Thrift Supervision may from time to time be advisable. Such advances shall be in addition to the assessments authorized in subsection (b) and shall be apportioned by the Director of the Office of Thrift Supervision among the banks in proportion to the total assets of the respective banks, determined in such man-

ner and as of such times as the Director of the Office of Thrift Supervision may prescribe. Each such advance shall bear interest at the rate of 4½ per centum per annum from the date of the advance and shall be repaid by the Director of the Office of Thrift Supervision in such installments and over such period, not longer than twenty-five years from the making of the advance, as the Director of the Office of Thrift Supervision may determine. Payments of interest and principal upon such advances shall be made from receipts of the Director of the Office of Thrift Supervision or from other sources which may from time to time be available to the Director of the Office of Thrift Supervision. The obligation of the Director of the Office of Thrift Supervision to make any such payment shall not be regarded as an obligation of the United States. To such extent as the Director of the Office of Thrift Supervision may prescribe any such obligation shall be regarded as a legal investment for the purposes of subsections (g) and (h) of section 11 and for the purposes of section 16.

[(3) The plans and designs for such buildings and facilities and for any such enlargement, remodeling, or reconstruction shall, to such extent as the chairperson of the Director of the Office of Thrift Supervision may request, be subject to his approval.

[(4) Upon the making of arrangements mutually agreeable to the Director of the Office of Thrift Supervision and the Administrator, which arrangements may be modified from time to time by mutual agreement between them and may include but shall not be limited to the making of payments by the Director of the Office of Thrift Supervision and such agencies to the Administrator and by the Administrator to the Director of the Office of Thrift Supervision, the custody, management, and control of such buildings and facilities and of such real property shall be vested in the Administrator in accordance therewith. Until the making of such arrangements such custody, management, and control including the assignment and allotment and the reassignment and reallotment of building and other space, shall be vested in the Director of the Office of Thrift Supervision.

[(5) Any proceeds (including advances) received by the Director of the Office of Thrift Supervision in connection with this subsection, and any proceeds from the sale or other disposition of real or other property acquired by the Director of the Office of Thrift Supervision under this subsection, shall be considered as receipts of the Director of the Office of Thrift Supervision, and obligations and expenditures of the Director of the Office of Thrift Supervision and such agencies in connection with this subsection shall not be considered as administrative expenses. As used in this subsection, the term "property" shall include interests in property.

[(6) With respect to its functions under this subsection the Director of the Office of Thrift Supervision shall (A) annually prepare and submit a budget program as provided in title I of the Government Corporation Control Act with regard to wholly owned Government corporations, and for purposes of this sentence, the terms "wholly owned Government corporations" and "Government corporations", wherever used in such title, shall include the Director of the Office of Thrift Supervision, and (B) maintain an integral set of accounts which shall be audited by the General Accounting Of-

fice in accordance with the principles and procedures applicable to commercial corporate transactions as provided in such title, and no other settlement or adjustment shall be required with respect to transactions under this subsection or with respect to claims, demands, or accounts by or against any person arising thereunder. The first budget program shall be for the first full fiscal year beginning on or after the date of the enactment of this subsection. Except as otherwise provided in this subsection or by the Director of the Office of Thrift Supervision, the provisions of this subsection and the functions thereby or thereunder subsisting shall be applicable and exercisable notwithstanding and without regard to the Act of June 20, 1938 (D.C. Code, secs. 5–413—5–428), except that the proviso of section 16 thereof shall apply to any building constructed under this subsection, and section 306 of the Act of July 30, 1947 (61 Stat. 584), or any other provison of law relating to the construction, alteration, repair, or furnishing of public or other buildings or structures or the obtaining of sites therefor, but any person or body in whom any such function is vested may provide for delegation or redelegation of the exercise of such function.

[(7) No obligation shall be incurred and no expenditure, except in liquidation of obligation, shall be made pursuant to the first two subparagraphs of paragraph (1) of this subsection if the total amount of all obligations incurred pursuant thereto would thereupon exceed $13,200,000, or such greater amount as may be provided in an appropriation Act or other law.**]**

* * * * * * *

SEC. 22. MEMBER FINANCIAL INFORMATION.

(a) IN GENERAL.—In order to enable the Federal Home Loan Banks to carry out the provisions of this Act, the Secretary of the Treasury, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the Federal Deposit Insurance Corporation, *and* the Chairperson of the National Credit Union Administration**[**, and the Director of the Office of Thrift Supervision**]**, upon request by any Federal Home Loan Bank—

(1) * * *

* * * * * * *

In addition, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, *and* the Chairperson of the National Credit Union Administration**[**, and the Director of the Office of Thrift Supervision**]** shall make available to the Board or any Federal Home Loan Bank the financial reports filed by members of any Bank to enable the Board or a Bank to compile and publish cost of funds indices or other financial or statistical reports.

* * * * * * *

[SEC. 24. (a) Any organization organized under the laws of any State and subject to inspection and regulation under the banking or similar laws of such State shall be eligible to become a member under this Act if—

[(1) it is organized solely for the purpose of supplying credit to its members;

[(2) its membership (A) is confined exclusively to building and loan associations, savings and loan associations, cooperative banks, and homestead associations; or (B) is confined exclusively to savings banks; and

[(3) of the institutions to which its membership is confined which are organized within the State, its membership includes a majority of such institutions.

[(b) In all respects, but subject to such additional rules and regulations as the Board may provide, any such organization shall be a member for the purposes of this Act.]

* * * * * * *

TITLE 11, UNITED STATES CODE

* * * * * * *

CHAPTER 1—GENERAL PROVISIONS

§ 101. Definitions

In this title—

(1) * * *

* * * * * * *

(21C) "Federal mutual bank holding company" has the same meaning as in section 5133B(h)(1) of the Revised Statutes of the United States.

* * * * * * *

CHAPTER 3—CASE ADMINISTRATION

* * * * * * *

SUBCHAPTER I—COMMENCEMENT OF A CASE

§ 303. Involuntary cases

(a) * * *

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) * * *

* * * * * * *

(3) if such person is a partnership—

(A) by fewer than all of the general partners in such partnership; or

(B) if relief has been ordered under this title with respect to all of the general partners in such partnership, by a general partner in such partnership, the trustee of such a general partner, or a holder of a claim against such partnership; [or]

(4) by a foreign representative of the estate in a foreign proceeding concerning such person[.]*; or*

(5) in a proceeding concerning a Federal mutual bank holding company, the Comptroller of the Currency.

* * * * * * *

(e) After notice and a hearing, and for cause, the court may require the petitioners under this section*, other than a petitioner specified in subsection (b)(5),* to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i) of this section.

(f) Notwithstanding section 363 of this title, except to the extent that the court orders otherwise *or a petition was filed by a petitioner specified in subsection (b)(5)*, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(g) At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may order the United States trustee to appoint an interim trustee under section 701 of this title to take possession of the property of the estate and to operate any business of the debtor. *Upon the filing of a petition by a petitioner specified in subsection (b)(5), and without requiring notice or hearing, the United States Trustee shall appoint an interim trustee from a list submitted by the Comptroller of the Currency of 5 disinterested persons that are qualified and willing to serve.* Before an order for relief, the debtor may regain possession of property in the possession of a trustee ordered appointed under this subsection if the debtor files such bond as the court requires, conditioned on the debtor's accounting for and delivering to the trustee, if there is an order for relief in the case, such property, or the value, as of the date the debtor regains possession, of such property.

* * * * * * *

TITLE 31, UNITED STATES CODE

* * * * * * *

SUBTITLE I—GENERAL

* * * * * * *

CHAPTER 3—DEPARTMENT OF THE TREASURY

* * * * * * *

SUBCHAPTER II—ADMINISTRATIVE

§ 321. General authority of the Secretary

(a) * * *

* * * * * * *

[(e) CERTAIN REORGANIZATION PROHIBITED.—The Secretary of the Treasury may not merge or consolidate the Office of Thrift Supervision, or any of the functions or responsibilities of the Office or the Director of such office, with the Office of the Comptroller of the Currency or the Comptroller of the Currency.]

* * * * * * *

SECTION 804 OF THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982

ALTERNATIVE MORTGAGE AUTHORITY

SEC. 804. (a) In order to prevent discrimination against State-chartered depository institutions, and other nonfederally chartered housing creditors, with respect to making, purchasing, and enforcing alternative mortgage transactions, housing creditors may make, purchase, and enforce alternative mortgage transactions, except that this section shall apply—

(1) with respect to banks *(as such term is defined in section 3 of the Federal Deposit Insurance Act) and all other housing creditors*, only to transactions made in accordance with regulations governing alternative mortgage transactions as issued by the Comptroller of the Currency for national banks, to the extent that such regulations are authorized by rulemaking authority granted to the Comptroller of the Currency with regard to national banks under laws other than this section; *and*

(2) with respect to credit unions, only to transactions made in accordance with regulations governing alternative mortgage transactions as issued by the National Credit Union Administration Board for Federal credit unions, to the extent that such regulations are authorized by rulemaking authority granted to the National Credit Union Administration with regard to Federal credit unions under laws other than this section[; and].

[(3) with respect to all other housing creditors, including without limitation, savings and loan associations, mutual savings banks, and savings banks, only to transactions made in accordance with regulations governing alternative mortgage transactions as issued by the Director of the Office of Thrift Supervision for federally charter savings and loan associations, to the extent that such regulations are authorized by rulemaking authority granted to the Director of the Office of Thrift Supervision with regard to federally chartered savings and loan associations under laws other than this section.]

* * * * * * *

SECTION 2 OF THE BANK PROTECTION ACT OF 1968

SEC. 2. As used in this Act the term "Federal supervisory agency" means—

(1) The Comptroller of the Currency with respect to national banks and district banks,

(2) The Board of Governors of the Federal Reserve System with respect to Federal Reserve banks and State banks which are members of the Federal Reserve System, *and*

(3) The Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation and State savings associations[, and].

[(4) The Director of the Office of Thrift Supervision with respect to Federal savings.]

SECTION 803 OF THE COMMUNITY REINVESTMENT ACT OF 1977

SEC. 803. For the purposes of this title—

(1) the term "appropriate Federal financial supervisory agency" means—

(A) the Comptroller of the Currency with respect to national banks;

(B) the Board of Governors of the Federal Reserve System with respect to State chartered banks which are members of the Federal Reserve System and bank holding companies; *and*

(C) the Federal Deposit Insurance Corporation with respect to State chartered banks and savings banks which are not members of the Federal Reserve System and the deposits of which are insured by the Corporation; [and]

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and a savings and loan holding company;]

* * * * * * *

(3) the term "application for a deposit facility" means an application to the appropriate Federal financial supervisory agency otherwise required under Federal law or regulations thereunder for—

(A) a charter for a national bank [or Federal savings and loan association];

* * * * * * *

SECTION 208 OF THE DEPOSITORY INSTITUTIONS DEREGULATION AND MONETARY CONTROL ACT OF 1980

ENFORCEMENT

SEC. 208. (a) Compliance with the regulations issued by the Deregulation Committee under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) * * *

* * * * * * *

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation[; and] .

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.]

* * * * * * *

DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT

* * * * * * *

SEC. 202. As used in this title—

(1) * * *

(2) the term "depository holding company" means a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956, a company which would be *or* a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 but for the exemption contained in section 2(a)(5)(F) thereof[, or a savings and loan holding company as defined in section 408(a)(1)(I) of the National Housing Act];

* * * * * * *

SEC. 205. The prohibitions contained in sections 203 and 204 shall not apply in the case of any one or more of the following or subsidiary thereof:

(1) * * *

* * * * * * *

(8)(A) A [diversified savings and loan holding company (as defined in section 408(a)(1)(F) of the National Housing Act) with respect to] *company which is, or has filed an application to become, a depository institution holding company and which satisfies the consolidated net worth and consolidated net earnings requirements for a diversified savings and loan holding company (as set forth in section 10(1)(F) of the Home Owners' Loan Act, as such section is in effect and interpreted on such date, which shall be applicable for purposes of this paragraph without regard to the fact that a depository institution subsidiary of such holding company has ceased to be a savings association after January 1, 1997) with respect to* the service of a director of such company who is also a director of any nonaffiliated depository institution or depository holding company (including a savings and loan holding company) if—

(i) notice of the proposed dual service is given by such diversified savings and loan holding company to—

* * * * * * *

[(9) Any savings association (as defined in section 10(a)(1)(A) of the Home Owners' Loan Act or any savings and loan holding company (as defined in section 10(a)(1)(D) of such Act) which has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act, except that this para-

graph shall apply only with respect to service as a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the Director of the Office of Thrift Supervision has determined that such service is consistent with the purposes of this Act and the Home Owners' Loan Act.**]**

* * * * * * *

SEC. 207. This title shall be administered and enforced by—

(1) * * *

* * * * * * *

[(4) the Director of the Office of Thrift Supervision with respect to a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and savings and loan holding companies,**]**

[(5)**]** *(4)* the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration, and

[(6)**]** *(5)* Upon referral by the agencies named in the foregoing paragraphs (1) through (5), the Attorney General shall have the authority to enforce compliance by any person with this title.

* * * * * * *

SEC. 209. Regulations to carry out this title, including regulations that permit service by a management official that would otherwise be prohibited by section 203 or section 204, if such service would not result in a monopoly or substantial lessening of competition, may be prescribed by—

(1) * * *

* * * * * * *

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation, *and*

[(4) the Director of the Office of Thrift Supervision with respect to in-titutions the accounts of which are insured by the Federal Deposit Insurance Corporation, and savings and loan holding companies, and**]**

[(5)**]** *(4)* the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration.

SECTION 305 OF THE EMERGENCY HOME FINANCE ACT OF 1970

MORTGAGE OPERATIONS

SEC. 305. (a) * * *

* * * * * * *

(b) Notwithstanding any other law, authority to enter into and to perform and carry out any transactions or matter referred to in this section is conferred on any Federal home loan bank, Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the National Credit Union Administration, [any Federal savings and loan association,] any Federal home loan bank member, and any other financial institution the deposits or accounts of which are insured by any agency of the United States to the extent that Congress has the power to confer such authority.

* * * * * * *

SECTION 610 OF THE EXPEDITED FUNDS AVAILABILITY ACT

SEC. 610. ADMINISTRATIVE ENFORCEMENT.

(a) ADMINISTRATIVE ENFORCEMENT.—Compliance with the requirements imposed under this title, including regulations prescribed by and orders issued by the Board of Governors of the Federal Reserve System under this title, shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; *and*

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and]

[(3)] *(2)* the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * * * *

FEDERAL CREDIT UNION ACT

TITLE I—FEDERAL CREDIT UNIONS

* * * * * * *

POWERS

SEC. 107. A Federal credit union shall have succession in its corporate name during its existence and shall have power—

(1) * * *

* * * * * * *

(7) to invest its funds (A) in loans exclusively to members; (B) in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby; (C) in accordance with rules and regulations prescribed by the Board, in loans to other credit unions in the total amount not exceeding 25 per centum of its paid-in and unimpaired capital and surplus; (D) in shares or accounts of savings and loan associations or mutual savings banks, the accounts of which are insured by [the Federal Savings and Loan Insurance Corporation or] the Federal Deposit Insurance Corporation; (E) in obligations issued by banks for cooperatives, Federal land banks, Federal intermediate credit banks, Federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in section 101 of the Government Corporation Control Act as a wholly owned Government corporation; or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association; or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act; or in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by any other agency of the United States and a Federal credit union may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act; (F) in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more Government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee; (G) in shares or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the Federal credit union making the investment; (H) in shares, share certificates, or share deposits of federally insured credit unions; (I) in the shares, stocks, or obligations of any other organization, providing services which are associated with the routine operations of credit unions, up to 1 per centum of the total paid in and unimpaired capital and surplus of the credit union with the approval of the Board: *Provided, however,* That such authority does not include the power to acquire

control directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by this Act; (J) in the capital stock of the National Credit Union Central Liquidity Facility (K) investments in obligations of, or issued by, any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision), except that no credit union may invest more than 10 per centum of its unimpaired capital and surplus in the obligations of any one issuer (exclusive of general obligations of the issuer).

* * * * * * *

TITLE II—SHARE INSURANCE

* * * * * * *

TERMINATION OF INSURANCE; CEASE-AND-DESIST PROCEEDINGS; SUSPENSION AND/OR REMOVAL OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS; TAKING POSSESSION OF COMMITTEE MEMBERS

SEC. 206. (a) * * *

* * * * * * *

(g) REMOVAL AND PROHIBITION AUTHORITY.—

(1) * * *

* * * * * * *

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (i), has been removed or suspended from office in an insured credit union or prohibited from participating in the conduct of the affairs of an insured credit union may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

(i) any insured depository institution;

(ii) any institution treated as an insured bank under paragraph (3) or (4) of section 8(b) of the Federal Deposit Insurance Act**[**, or as a savings association under section 8(b)(8) of such Act**]**;

* * * * * * *

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978

TITLE X—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

* * * * * * *

SEC. 1001. This title may be cited as the "Federal Financial Institutions Examination Council Act of 1978".

* * * * * * *

DEFINITIONS

SEC. 1003. As used in this title—

(1) the term "Federal financial institutions regulatory agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, [the Office of Thrift Supervision,] and the National Credit Union Administration;

* * * * * * *

ESTABLISHMENT OF THE COUNCIL

SEC. 1004. (a) There is established the Financial Institutions Examination Council which shall consist of—

(1) * * *

* * * * * * *

(3) a Governor of the Board of Governors of the Federal Reserve System designated by the Chairman of the Board, *and*

[(4) the Director, Office of Thrift Supervision.]

[(5)] *(4)* the Chairman of the National Credit Union Administration Board.

* * * * * * *

FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989

* * * * * * *

TITLE XI—REAL ESTATE APPRAISAL REFORM AMENDMENTS

* * * * * * *

SEC. 1121. DEFINITIONS.

For purposes of this title:

(1) * * *

* * * * * * *

(6) FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES.—The term "Federal financial institutions regulatory agencies" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporations, the Office of the Comptroller of the Currency, [the Office of Thrift Supervision,] and the National Credit Union Administration.

* * * * * * *

TITLE XII—MISCELLANEOUS PROVISIONS

* * * * * * *

SEC. 1206. COMPARABILITY IN COMPENSATION SCHEDULES.

The Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration Board, the Federal Housing Finance Board, the Oversight Board of the Resolution Trust Corporation, *and* the Farm Credit Administration, [and the Office of Thrift Supervision,] in establishing and adjusting schedules of compensation and benefits which are to be determined solely by each agency under applicable provisions of law, shall inform the heads of the other agencies and the Congress of such compensation and benefits and shall seek to maintain comparability regarding compensation and benefits.

* * * * * * *

SEC. 1216. EQUAL OPPORTUNITY.

(a) IN GENERAL.—For purposes of this Act, Executive Order Numbered 11478, providing for equal employment opportunity in the Federal Government, shall apply to—

(1) the Comptroller of the Currency;

[(2) the Director of the Office of Thrift Supervision;]

[(3)] *(2)* the Federal home loan banks;

[(4)] *(3)* the Federal Deposit Insurance Corporation;

[(5)] *(4)* the Oversight Board of the Resolution Trust Corporation; and

[(6)] *(5)* the Resolution Trust Corporation.

* * * * * * *

(c) SOLICITATION OF CONTRACTS.—The Federal Deposit Insurance Corporation, the Comptroller of the Currency, [the Director of the Office of Thrift Supervision,] the Federal Housing Finance Board, the Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation shall each prescribe regulations to establish and oversee a minority outreach program within each such agency to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public and private, in order to manage the institutions and their assets for which the agency is responsible or to perform such other functions authorized under any law applicable to such agency.

* * * * * * *

HOME MORTGAGE DISCLOSURE ACT OF 1975

TITLE III—HOME MORTGAGE DISCLOSURE

SHORT TITLE

SEC. 301. This title may be cited as the "Home Mortgage Disclosure Act of 1975".

* * * * * * *

MAINTENANCE OF RECORDS AND PUBLIC DISCLOSURE

SEC. 304. (a) * * *

* * * * * * *

(h) SUBMISSION TO AGENCIES.—The data required to be disclosed under susbsection (b)(4) shall be submitted to the appropriate agency for each institution reporting under this title. Notwithstanding the requirement of section 304(a)(2)(A) for disclosure by census tract, the Board, in cooperation with other appropriate regulators, including—

(1) the Office of the Comptroller of the Currency for national banks and Federal branches and Federal agencies of foreign banks;

[(2) the Director of the Office of Thrift Supervision for savings associations;]

[(3)] *(2)* the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in section 303(2)(A) which is not otherwise referred to in this paragraph;

[(4)] *(3)* the National Credit Union Administration Board for credit unions; and

[(5)] *(4)* the Secretary of Housing and Urban Development for other lending institutions not regulated by the agencies referred to in paragraphs (1) through [(4)] *(3)*,

shall develop regulations prescribing the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public. These regulations shall also require the collection of data required to be disclosed under subsection (b)(4) with respect to loans sold by each institution reporting under this title, and, in addition, shall require disclosure of the class of the purchaser of such loans. Any reporting institution may submit in writing to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.

* * * * * * *

ENFORCEMENT

SEC. 305. (a) * * *

(b) Compliance with the requirements imposed under this title shall be enforced under—

(1) * * *

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;]

[(3)] *(2)* the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any credit union; and

[(4)] *(3)* other lending institutions, by the Secretary of Housing and Urban Development.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * * * *

RELATION TO STATE LAWS

SEC. 306. (a) * * *

(b) The Board may by regulation exempt from the requirements of this title any State chartered depository institution within any State or subdivision thereof if it determines that, under the law of such State or subdivision, that instititution is subject to requirements substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection [shall be enforced under—

[(1) section 8 of the Federal Deposit Insurance Act in the case of national banks, by the Comptroller of the Currency; and

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation] *under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the case of national banks, by the Comptroller of the Currency*.

* * * * * * *

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992

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TITLE XIII—GOVERNMENT SPONSORED ENTERPRISES

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Subtitle A—Supervision and Regulation of Enterprises

PART 1—FINANCIAL SAFETY AND SOUNDNESS REGULATOR

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SEC. 1315. PERSONNEL.

(a) * * *

(b) COMPARABILITY OF COMPENSATION WITH FEDERAL BANKING AGENCIES.—In fixing and directing compensation under subsection (a), the Director shall consult with, and maintain comparability with compensation of officers and employees of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, *and* the Federal Deposit Insurance Corporation**[**, and the Office of Thrift Supervision**]**.

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SEC. 1317. EXAMINATIONS.

(a) * * *

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(c) EXAMINERS.—The Director shall appoint examiners to conduct examinations under this section. The Director may contract with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, *or* the Federal Deposit Insurance Corporation**[**, or the Director of the Office of Thrift Supervision**]** for the services of examiners. The Director shall reimburse such agencies for any costs of providing examiners from amounts available in the Federal Housing Enterprises Oversight Fund.

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NATIONAL HOUSING ACT

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TITLE II—MORTGAGE INSURANCE

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SEC. 203. (a) * * *

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(s) Whenever the Secretary has taken any discretionary action to suspend or revoke the approval of any mortgagee to participate in any mortgage insurance program under this title, the Secretary shall provide prompt notice of the action and a statement of the reasons for the action to—

(1) * * *

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(6) if the mortgagee is a State bank that is a member of the Federal Reserve System or a subsidiary or affiliate of such a bank, or a bank holding company or a subsidiary or affiliate

of such a company, the Board of Governors of the Federal Reserve System; *and*

(7) if the mortgagee is a State bank *(as defined in section 3 of the Federal Deposit Insurance Act)* that is not a member of the Federal Reserve System or is a subsidiary or affiliate of such a bank, the Board of Directors of the Federal Deposit Insurance Corporation**[**; and**]**.

[(8) if the mortgagee is a Federal or State savings association or a subsidiary or affiliate of a savings association, the Director of the Office of Thrift Supervision.**]**

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TITLE V—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

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SEC. 502. In carrying out their respective functions, powers, and duties—

(a) * * *

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(c) The Secretary of Housing and Urban Development **[**and the Director of the Office of Thrift Supervision, respectively**]**, may, in addition to and not in derogation of any powers and authorities conferred elsewhere in this Act—

(1) * * *

* * * * * * *

SECTION 202 OF THE ACT OF OCTOBER 28, 1974

AN ACT To increase deposit insurance from $20,000 to $40,000, to provide full insurance for public unit deposits of $100,000 per account, to establish a National Commission on Electronic Fund Transfers, and for other purposes.

MEMBERSHIP

SEC. 202. (a) The Commission shall be composed of twenty-six members as follows:

(1) * * *

* * * * * * *

(12) seven individuals, appointed by the President, who are officers or employees of, or who otherwise represent banking, **[**thrift, or other business entities, including one representative each of commercial banks, mutual savings banks, savings and loan associations,**]** *or other business entities, including 3 representatives from different types of insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) and 1 representative each of* credit unions, retailers, nonbanking institutions offering credit card services, and organizations providing interchange services, for credit cards issued by banks;

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SECTION 4 OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

UNIFORM SETTLEMENT STATEMENT

SEC. 4. (a) The Secretary, in consultation with the Administrator of Veterans' Affairs[,] *and* the Federal Deposit Insurance Corporation[, and the Director of the Office of Thrift Supervision], shall develop and prescribe a standard form for the statement of settlement costs which shall be used (with such variations as may be necessary to reflect differences in legal and administrative requirements or practices in different areas of the country) as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans. Such form shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement and shall indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. The Secretary may, by regulation, permit the deletion from the form prescribed under this section of items which are not, under local laws or customs, applicable in any locality, except that such regulation shall require that the numerical code prescribed by the Secretary be retained in forms to be used in all localities. Nothing in this section may be construed to require that that part of the standard form which relates to the borrower's transaction to be furnished to the seller, or to require that that part of the standard form which relates to the seller be furnished to the borrower.

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RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994

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TITLE I—COMMUNITY DEVELOPMENT AND CONSUMER PROTECTION

Subtitle A—Community Development Banking and Financial Institutions Act

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SEC. 117. STUDIES AND REPORTS; EXAMINATION AND AUDIT.

(a) * * *

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(e) CONSULTATION.—In the conduct of the studies required under this section, the Fund shall consult, as appropriate, with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, the Farm Credit Administration, [the Director of the Office of Thrift Supervision,] the National Credit

Union Administration Board, Indian tribal governments, community reinvestment organizations, civil rights organizations, consumer organizations, financial organizations, and such representatives of agencies or other persons, at the discretion of the Fund.

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TITLE III—PAPERWORK REDUCTION AND REGULATORY IMPROVEMENT

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SEC. 307. CALL REPORT SIMPLIFICATION.

(a) MODERNIZATION OF CALL REPORT FILING AND DISCLOSURE SYSTEM.—In order to reduce the administrative requirements pertaining to bank reports of condition, **[**savings association financial reports,**]** and bank holding company consolidated and parent-only financial statements, and to improve the timeliness of such reports and statements, the Federal banking agencies shall—

(1) * * *

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SECTION 270 OF THE TRUTH IN SAVINGS ACT

SEC. 270. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—Compliance with the requirements imposed under this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act—

(A) by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) in the case of insured depository institutions (as defined in section 3(c)(2) of such Act); *and*

(B) by the Federal Deposit Insurance Corporation in the case of depository institutions described in clause (i), (ii), **[**or (iii)**]** *(iii), or (v)* of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act)**[**; and**]**.

[(C) by the Director of the Office of Thrift Supervision in the case of depository institutions described in clause (v) and or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and**]**

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ADDITIONAL VIEWS OF HON. RICK LAZIO

Congratulations to Chairman Bliley, Chairman Oxley, Ranking Member Dingell and my good fried from New York, Ranking Member Manton. You have all done tremendous work to get our Committee to this point on this very controversial bill.

For three years, I have been working on legislation which claims to accomplish "financial modernization". Clearly, Congress is not driving the modernization process. We are attempting, instead, to keep pace legislatively with the changes underway due to the forces of technology and the actions of the financial services industry.

This legislation is critical because the markets are moving so swiftly. Technology is enabling the financial services industry and its customers to interact directly. Consider the following examples: dramatic shifts of family savings from traditional banking instruments into mutual funds; the advent of sweep accounts and ATMs; and an Online Banking Association unveiling of a system that brings Internet surfing to televisions so consumers will be able to use smart cards for on-line commerce. A survey recently released by Booz Allen & Hamilton predicts that corporate Internet financial services sites will increase to over 2,000 by the year 2000. The financial services industry is so different from the one that existed 60 years ago when Glass-Steagall was enacted; Congress need to act.

At the Subcommittee, I offered an amendment to the Substitute that makes several significant substantive changes to the scope of the thrift grandfather provisions of H.R. 10 (as passed by the Banking Committee), including: (i) the scope of grandfathered activities and affiliations for unitary thrift holding companies is significantly curtailed; (ii) grandfathered holding companies are precluded from acquiring additional banks or thrifts even if those institutions are merged into the converted thrift; and (iii) safeguards are provided to the taxpayer when transactions occur between a thrift and a commercial affiliate when both are owned by the same unitary holding company.

The amendment is consistent with the concept of financial services modernization because our bill should permit companies to take advantage of the changes in the financial services marketplace. Our Committee's legislation should grandfather all activities and affiliations that are currently permitted for a unitary thrift holding company (not just those in which a company is currently engaged) because this approach more appropriately balances the competing goals of restricting the spread of unitary holding companies and allowing existing unitary holding companies to continue

to operate with a minimum of disruption. The Banking Committee bill also avoids disputes over the scope of grandfathered activities (e.g., would acquisition of a new piece of property by a grandfathered holding company engaged in real estate activities constitute a new "activity"? and preserves organizational flexibility (e.g., forming a new company to hold an existing real estate project would not be prohibited as a new "affiliation").

Prohibiting the converted thrift subsidiary of a grandfathered unitary thrift holding company from acquiring another bank through a merger unnecessarily harms the competitive position of that organization. Concerns over the wholesale mixing of commercial banking and commerce are adequately addressed by the requirements in H.R. 10 that the converted thrift subsidiary resulting from the merger continue to meet the Qualified Thrift Lender test and the restrictions on commercial and certain other lending activities that currently apply to thrifts. Congress must be careful to ensure that while we encourage companies to engage in new business we also fully recognize that insured depository institutions and federal taxpayers should be protected.

I am pleased that most of my amendment concerning the grandfathering of the unitary thrift holding companies is incorporated in the Manager's Amendment today. The provisions that will be included in the Manager's Amendment will permanently grandfather all powers, activities and affiliations, that unitary thrift holding companies have today and place limitations on transactions between a thrift and a commercial affiliate. This is a significant step in the right direction and I will support these provisions. However, I look forward to working with my colleagues to further improve the grandfathering provisions for thrifts and unitaries by empowering a converted thrift to acquire additional banks or thrifts if those institutions are merged into the converted thrift. To restrict the growth of a financial company in today's marketplace condemns it to a slow death,

At the Subcommittee, I also offered, with the intention to initiate a constructive debate, an amendment to the Substitute that would have allowed a financial holding company and an investment bank holding company supervised by the Federal Reserve Board to engage in activities that are not financial in nature provided: (i) gross domestic revenues derived from such activities do not exceed ten percent of the consolidated annual gross domestic revenues of the holding company; (ii) the assets of any subsidiary engaged in nonfinancial activities do not exceed $750 million at the time that shares of the subsidiary are acquired by the holding company (commercial affiliations would be prevented between the top 1000 companies and a financial holding company); and (iii) such holding company provides notice to the board within 30 days of commencing the activity or acquiring the shares. My amendment also provided that an insured depository institution may not engage in a covered transaction with any such affiliated nonfinancial company. My amendment replaced the grandfather provisions for nonfinancial activities contained in the Substitute.

A commercial basket is necessary to ensure that financial services providers can continue to innovate and evolve without facing unnecessary statutory and regulatory barriers. Years ago, the

banking industry was prohibited from engaging in the data information because of outdated laws. Today, technology is moving so fast: from pagers and cellular phone to electronic commerce and the Internet. To place artificial and unreasonable barriers on our financial service industry makes no sense, since it is impossible to predict what products and services will emerge tomorrow.

In fact, securities firms, insurance companies and other diversified financial services business have never been prohibited from affiliating with commercial enterprises. Modernization legislation should reflect the current market, move us forward and permit some form of commercial affiliation. A ten percent basket, in my opinion, is a reasonable first step toward the integration of commerce and banking. We do not want to put our financial services industry in a position where they might lose out on cutting edge products. This sized basket is sound public policy because it accounts for the current activities of most companies today and permits substantial growth for years to come. The basket should provide a cushion to accommodate the normal growth of a commercial enterprise and the potential decrease of financial activity revenues.

I am please that much of my commercial basket amendment is incorporated into the Manager's Amendment today. The provisions in the Manager's Amendment will create a commercial basket that is limited to five percent of gross domestic revenues or $500 million in revenues, whichever is less. The prohibition of affiliations between a financial holding company and the top 1000 companies is also included in the Manager's Amendment. Again, this is a significant step in the right direction and I will support these provisions. However, I look forward to working with may colleagues to increase the size of the commercial basket to one that adequately looks forward and allows for the innovation and creativity of our financial services providers.

The only amendment I will offer today is designed to begin the discussion of a compromise approach to the provisions in this bill that would push traditional banking activities out of a bank to a broker-dealer. My amendment represents a sound starting point to bring the stakeholders together.

It does not push out as many activities as our Committee bill but it also does not permit as many activities to remain inside a bank as the Banking Committee bill.

My amendment makes changes to the following areas: trust and fiduciary activities, stock purchase and dividend reinvestment plan activities, private placements, safekeeping and custodial activities, and the definition of a qualified investor. As the following examples demonstrate, a blind application of the functional regulation principle without consideration of whether its underlying purposes—safety and soundness and investor protection—are served, benefits no one.

The exemption for trust and fiduciary activities, services for which customers receive the very highest level of protection and for which banks are subject to private causes of action, has been significantly narrowed by our Committee's bill. Among other things, this provision would essentially repeal Congress' decision to allow banks to offer self-directed IRAs to individuals. Section 408 of the Internal Revenue Code specifically authorizes banks to serve as

trustees or custodians for self-directed IRA accounts. Even though these accounts are treated as trusts, have been offered for years without any suggestion of problems, are regulated by the banking agencies and the Secretary of Labor, the Substitute would force banks to stop offering them.

The Substitute also limits the flexibility of shareholder benefit plans. Corporations, such as Exxon, IBM, ATT, Ford, Chrysler and over 300 others, offer investors the opportunity to purchase shares of the company directly through a shareholder benefit plan. These plans are administered by the corporation's transfer agent, which frequently is a bank, and are subject to conditions set out by the SEC. They offer investors the ability to purchase stock in a company in which they have chosen to invest at little or no cost, particularly when compared to fees charged by brokers. These plans represent a further democratization of the stock market because customers can invest without a broker and with little cost. The Substitute's exemption for employee and shareholder benefit plans would prohibit banks from offering these direct participation programs. The arrangements clearly benefit investors and there has been no indication that any wrongdoing has occurred.

A third example is that private placements for third parties would be pushed out of the bank even though it is a riskless agency activity that banks have provided to customers for years. Individuals who purchase securities pursuant to a private placement conducted by a bank receive all the same disclosures under the Securities Act of 1933 that a broker would have to provide to private placement investors.

The changes made by this amendment are critical for four reasons.

First, the amendment draws the line between banking and securities activities more appropriately than either the bill before us today of H.R. 10 as passed by the Banking Committee. It represents sound policy and is fully consistent with the concept of functional regulation.

Second, I want to make clear to my colleagues that these issues have not been worked out. The banking industry remains fundamentally opposed to the push out provisions in our committee's bill.

Third, this amendment does not create any loopholes that would allow banks to escape any broker-dealer regulation to which they are subject today. In fact, that would be impossible because banks today are completely exempt from all such regulation. My amendment would simply subject some banking activities to broker-dealer regulation but not go as far as the committee bill.

Finally, a consensus on these issues is not far away. The banking and securities industries have been discussing these issues, and the parties are close to the type of compromise that I could support.

There is one other issue that I want to mention. The area of derivatives is controversial but is not in my amendment. I want to urge the parties to try to agree on the proper regulatory treatment for all derivative products that we know of today. At the same time, we should not stifle the creativity of financial services companies by pigeon-holing future derivative products into multiple regulatory schemes.

As a general matter, pure functional regulation for the sole purpose of "functional regulation" makes little sense if all the affected activities are subject to fully regulation by the bank regulators, no evidence of abuse exists, and the increased costs of pushing these activities out of the bank translates into increased costs for customers. Make no mistake, the costs will be borne by the market.

My amendment is not meant to be a comprehensive compromise on the push out portions of this legislation. However, the changes I have described must be fully considered in order to avoid a bitterly divisive fight at the Rules Committee and on the House floor.

A workable compromise on these issues is within reach. If we are truly serious about financial modernization, we must roll up our sleeves and find a fair middle ground. I look forward to working with my colleagues to revise the bank broker-dealer exemptions to make them workable and consistent with good public policy as well as a rationale application of functional regulation. This is something that we can do, should do and must do if we want to pass reform legislation.

Financial services modernization legislation is critical to the country because a strong and healthy financial base is at the core of a healthy economy. We as legislators, do not know what financial products and services will be available to and wanted by the public in the future. Technology has the power to change the shape of our market almost overnight. How will a community's needs and thus a financial services company's business change as a result of the information age? Congress can't tell you and unnecessary legislative constraints on the growth and prosperity of the marketplace is dangerous to financial institutions, to businesses, to the economy, and to the customer. It is possible to push the markets in the right direction while, in the public interest maintaining the necessary safeguards applicable to insured depository institutions.

Technology is pushing the insurance, securities and banking industries into the information age, but they are still being held back by laws written 60 years ago. Congress should break down barriers and encourage competition because more innovative products and better prices will result. If a company's activity doesn't fit into them the pretty little boxes of authorized activities that are created by this bill will we threaten its corporate survival? Do we want them to be able to bridge the gap, if it is a wise investment, in a rural area that needs a hospital or agricultural cooperative? As a whole, our financial services companies are innovative and healthy and they should not be penalized as we move this legislation forward. They should be given flexibility to strive for the corporate synergies because to do anything less would conflict with the notion of modernization.

I also want to thank Chairman Bliley, Chairman Oxley and Ranking Members Dingell and Manton for their cooperation in working with me. Many people will view this bill as a "glass that is half empty." I personally view our Committee's financial modernization bill as a "glass that is half full". It certainly has improved during every legislative step at our Committee. I will vote for the bill today because this process must continue to move forward. My hope is that at the next step we will move even close to the ever-elusive financial services modernization bill that is so

close to perfectly balanced that most of the industry stakeholders are in support of its passage.

RICK LAZIO.

ADDITIONAL VIEWS OF CONGRESSMAN JOHN D. DINGELL

I support H.R. 10, the Financial Services Act of 1997, as reported by the Committee on Commerce, and I commend both Mr. Bliley, the chairman of the full Committee, and Mr. Oxley, the chairman of the finance subcommittee, for their willingness to work with the Democratic Members of the Committee. The Banking Committee's version of the bill was totally unacceptable. The bipartisan bill that has come forward from our compromise is a good one.

This bill now meets the requirements that I have always felt were necessary for a proper reform of Glass-Steagall: one, true separation of financial activities, and two, functional regulation. The bill meets both of these tests. It sees to it that the playing field is level and fair. It does not afford the banks the kind of special preference that they sought, but it does allow them to complete in a fair and even manner on fair and even ground. It does not undermine the Supreme Court decision in the Barnett Bank case, nor does it impair the ability of banks to compete fairly in the marketplace.

I am one of the few people voting to report this bill who remembers the Depression. The causes of the Depression were investigated in a very lengthy fashion, and literally volumes were published. Those inquiries found that all financial powers were concentrated in banks, who abused their ability to sell securities and to manipulate the securities markets, their ability to control the deposits of their depositors, and their ability to engage in all manner of unrestrained and untrammeled economic activity. They were not constrained in the slightest degree by either good sense or by the requirements of law. A tremendous and a terrifying collapse occurred that threw one-third of American workers into unemployment and that caused the currency to simply disappear. People refused to spend money: they put it under their mattress because they did not trust the banks.

The Government went through some very heroic efforts to try and get this country going again. It first of all had to guarantee bank deposits because nobody trusted banks or bankers. Second of all, to see to it that banks and bankers did not engage again in the practices that had caused the Depression, banking was split from other financial activities. Third of all, laws were put in place to regulate the securities markets and to do other things. Yet, in spite of all of this, it took this country 10 years and a major war to pull ourselves out of the mess that had been created.

While I have lingering concerns about the thrift provisions, the bill before us is a good one. The bill resolves the legitimate complaints of people in the financial industry. At the same time, it keeps intact intelligent protections of investors and of consumers of banking and insurance services. It also protects the Federal Government and the taxpayers against games being played with Fed-

eral deposit insurance, and it sees to it that we still have a financial system which the little guy can trust.

JOHN D. DINGELL.

ADDITIONAL VIEWS OF CONGRESSMAN STUPAK

The stated intention of this bill is to open up our financial system and allow for financial combinations between industries, in order to promote more effective and efficient capital flows.

The restrictive state branching laws continue to prevent true competition in areas like Northern Michigan. The State of Michigan, to its credit, has adopted liberal banking laws that allow out-of-state banks to acquire existing branch facilities and to build de novo branches. Due to this opportunity, many banks from Wisconsin have come across the border and are providing banking services out of branches in Michigan. However, Wisconsin law prohibits Michigan banks from acquiring existing branches or building a de novo branch in Wisconsin. Although the Riegle-Neal Interstate Banking Act was supposed to open up our nation's banking system and tear down state impediments to competition, in the case of Northern Michigan it has been ineffective.

I offered and withdrew an amendment at Subcommittee that would prohibit banks from forming or affiliating with a Financial Services Holding Company if they are in a state that does not allow out of state banks to branch into their state, but allows their banks to branch out of state. The amendment did not pre-empt state law, nor did it require a state to permit out of state banks to branch interstate. Rather it gave states a choice of either providing for a level playing field in their banking markets or prohibiting banks in their state from taking advantage of the new affiliations we allow under this bill. Either way the choice remained in the hands of the states.

My intent was not to punish states, nor to impose a federal mandate on them. Rather I wished to ensure that banks like those in Michigan are not disadvantaged by allowing competition in their markets, while keeping them out of the markets of their competitors. To perpetuate this inequity would run counter the entire concept of H.R. 10.

I withdrew my amendment and did not reoffer at the full Committee, because I received a commitment from Chairman Leach of the Banking Committee that a representative of the Northern Michigan banks could testify at the Banking Committee's next hearing on Interstate Branching. It is my hope that their testimony will either push the Banking Committee to take action on this issue, or shame the Wisconsin State legislature to bring down their restrictive walls.

BART STUPAK.

MINORITY VIEWS

We are pleased that the Committee has reported financial modernization legislation for consideration by the full House. H.R. 10 is an important step towards achieving our goal of modernizing the nation's financial structure. As New Yorkers, we fully understand the importance and significance of providing a proper framework where financial services can thrive. New York is the capital of the world's economy and it is important that it remain so. Any legislation that is reported by this Committee must ensure that our financial structure retains its ability to adapt to the changing needs of the public.

To this end, we urge the House to include a 10% "commercial basket" provision in the final version of H.R. 10. A 10% commercial basket would permit financial holding companies (FHC) and investment bank holding companies (IBHC) to derive 10% of their gross revenues from commercial activities. FHCs or IBHCs could acquire a company engaged in commercial activities only if, at the time of the acquisition, the company did not have consolidated assets of more than $750 million.

We believe that financial services modernization legislation must allow FHCs and IBHCs to invest some percentage of its domestic gross revenues in non-financial activities. Modernization legislation should reflect the current market and permit some form of commercial affiliation. A 10-percent commercial basket is a reasonable first step toward integrating commerce and banking.

Legislation on this matter must be flexible enough to ensure that financial service providers can continue to evolve. While we are pleased that a 5% basket was included in the bill, a 10% basket provides the proper cushion to accommodate the both normal growth of a commercial enterprise and the potential decrease of financial activity revenues. H.R. 10 represents a huge step forward in modernizing our financial structure and establishing a proper basket provides avenues for future growth and innovation.

We strongly urge the House to include a 10% basket in H.R. 10 so that financial providers can move forward as we approach the 21st century. We look forward to working with our colleagues on this matter and thank you for your consideration.

ELIOT L. ENGEL.
EDOLPHUS TOWNS.

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